

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





# 75-1244

ORIGINAL

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P/S

In The  
**United States Court of Appeals**  
For The Second Circuit

UNITED STATES OF AMERICA,

*Plaintiff-Appellee.*

vs.

NICHOLAS L. BIANCO,

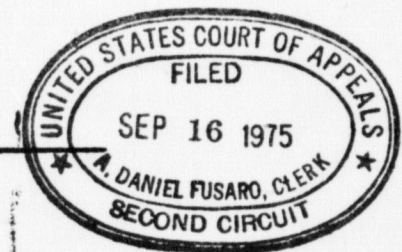
*Defendant-Appellant.*

*On Appeal from the United States District Court for the Eastern  
District of New York*

## APPENDIX FOR DEFENDANT-APPELLANT

Volume I, pp. 1a - 270a

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## INDEX

	PAGE
Docket Entries . . . . .	1
Information. . . . .	5
Transcript of Grand Jury Testimony of Appellant Nicholas L. Bianco dated April 14th, 1970 . . . . .	11
Transcript of Grand Jury Testimony of Appellant Nicholas L. Bianco dated April 28th, 1970 . . . . .	31
Transcript of Pre-trial Hearing dated October 3rd, 1974. . . . .	45
Transcript of Pre-trial Hearing dated November 21st, 1974. . . . .	91
Transcript of Pre-trial Hearing dated December 6th, 1975 . . . . .	136
Transcript of Government's Opening Statement. . . . .	161
Transcript of Testimony of Witness Alan H. Young. . . . .	165
Transcript of Testimony of Witness Samuel S. Sezzen . . . . .	197
Transcript of Testimony of Witness Fred Betancourt. . . . .	216
Transcript of Testimony of Witness Dominick Borrello. . . . .	225
Transcript of Testimony of Witness Herbert Kaplan . . . . .	250

## INDEX (CONT'D.)

	PAGE
Transcript of Testimony of Witness Louis Nahmias . . . . .	273
Transcript of Testimony of Witness Shayne Peters . . . . .	344
Transcript of Testimony of Witness Joseph Rabinovich . . . . .	433
Transcript of Testimony of Witness Richard E. Pellard. . . . .	462
Transcript of Testimony of Witness Michael Marchitello . . . . .	485
Transcript of Court's Charge. . . . .	497
Transcript of Sentencing Proceedings . . . . .	524
Copy of District Court Sentencing Schedule of Criminal Defendants during the Fiscal Year ended June 30th, 1973 . . . . .	538
Notice of Appeal. . . . .	540



DOCKET ENTRIES

THE UNITED STATES	)	
	)	74 CR 284
vs.	)	
	)	PLATT, J.
NICHOLAS L. BIANCO	)	

PROCEEDINGS

4-15-74	Information filed.
4-26-74	Before NEAHER, J. - Case called - Deft. and counsel James La Rossa present - Deft. arraigned and enters a plea of not guilty - Motions within 30 days - Bail set at \$10,000 P.R.B. - Bail limits extended to include East Coast.
6- 7-74	Notice of motion to dismiss, discovery and inspection, bill of particulars filed - Ret. 6-21-74 - Memorandum of law filed.
6-20-74	Govt's answering affidavit filed.
6-21-74	Before PLATT, J. - Case called - Adj'd. to July 21, 1974 (for dismissal).
7-12-74	Before PLATT, J. - Case called and adj'd. to July 26, 1974.
7-19-74	Deft's Memorandum of Law filed.
7-24-74	Govt's Memorandum of Law filed.
7-26-74	Before PLATT, J. - Case called - Deft's motion for an order dismissing information set down for hearing on 8-26-74 at 10:00 A.M.

8-26-74 Before PLATT, J. - Case called for dismissal - Adj'd. to 8-30-74.

9-19-74 Govt's Notice of Readiness for Trial filed.

9-30-74 Before PLATT, J. - Case called - Adj'd. to Oct. 2, 1974.

10- 2-74 Before PLATT, J. - Marked off.

10- 3-74 Before PLATT, J. - Case called - Hearing on admissible evidence ordered and begun - Deft. and counsel James La Rossa present - Hearing held and cont'd. to Oct. 11, 1974.

10-11-74 Before PLATT, J. - Case called - Adj'd. without date.

10-15-74 Stenographers transcript filed dated Oct. 3, 1974.

11-21-74 Before PLATT, J. - Case called - Deft. and counsel J. La Rossa present - Hearing held and cont'd. to Dec. 6, 1974.

12- 6-74 Before PLATT, J. - Case called - Deft. and counsel James L Rossa present - Hearing held and adj'd. without date.

3-10-75 Before PLATT, J. - Case called - Ready and passed.

3-31-74 Before PLATT, J. - Case called - Ready and passed.

4- 4-75 By PLATT, J. - Memorandum filed denying deft's motion for dismissal of indictment.

4- 7-75 Before PLATT, J. - Case called - Deft. and counsel present - Case ready and passed.

4-21-75 Before PLATT, J. - Case called - Trial ordered and begun - Jurors selected and sworn - Trial cont'd. to 4-22-75



4-22-75 Before PLATT, J. - Case called - Trial resumed - Trial cont'd to 4-23-75.

4-23-75 Before PLATT, J. - Case called - Deft. and counsel present - Trial resumed - Trial cont'd. to 4-24-75.

4-24-75 Before PLATT, J. - Case called - Trial resumed - Trial cont'd to 4-28-75.

4-28-75 Before PLATT, J. - Case called - Deft. and counsel present - Trial resumed - Gov't. rests - Deft's motion for judgment of acquittal denied - Deft. rests - Both sides rest - Trial cont'd. to 4/29/75.

4-29-75 Before PLATT, J. - Case called - Deft. and counsel present - Trial resumed - Court charges jury - jury retires to deliberate - Order of sustenance signed - trial cont'd to 4-30-75.

4-29-75 By PLATT, J. - Order of sustenance filed.

4-30-74 Before PLATT, J. - Case called - Deft. and counsel J. La Rossa present - trial resumed - Jury resumed deliberations - Jury returns with a verdict of guilty on counts 1 to 5 incl. - Jury polled and jury discharged - Trial concluded - Bail set at \$50,000 P.R.B. to be secured by \$5,000 surety bond - bail to be posted by May 2, 1975.

6-20-75 Before PLATT, J. - Case called - Deft. and counsel James La Rossa present - Deft. is sentenced on count 1 to imprisonment for one year and fine of \$10,000; on count 2 imprisonment for one year and fine of \$10,000, said sentence to run consecutively with sentence under count 1 and such fine to be paid in addition to the fine under count 1; on count 3 - same sentence consecutive to and fine in addition to counts 1 and 2; on count 4 (same as 3 - consecutive to



counts 1, 2 & 4; on count 5 - same as 4 - consecutive to counts 1 to 4 inc. - Execution of said sentence under count 5 is hereby suspended and the deft. is placed on probation for 5 years following the sentences on counts 1 to 4 upon the following conditions: that he pay all taxes and penalties and interest which he currently owes to the Internal Revenue Service before the expiration of such period of probation. The fine shall be in addition to the fines imposed under counts 1 to 4 - the deft. is ordered to stand committed until the foregoing fines are paid or otherwise discharged by due course of law. The Order that the deft. stand committed is stayed until July 15, 1975.

6-20-75	Judgment and Order of Probation filed - certified copies to Probation.
6-20-75	Notice of Appeal filed.
6-20-75	Docket entries and duplicate of Notice mailed to Court of Appeals.
6-25-75	Before PLATT, J. - Corrected Judgment to conform to Judgment of June 20, 1975.

A TRUE COPY  
ATTEST

DATED: 7/1/1975

LEWIS ORGEL

BY: \_\_\_\_\_  
DEPUTY CLERK

INFORMATION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

-v-

No. 74 CR 284

NICHOLAS L. BIANCO,

Defendant.

-----X  
THE UNITED STATES ATTORNEY CHARGES:

COUNT ONE

That during the calendar year 1967, the defendant, NICHOLAS L. BIANCO, who was a resident of the City of New York, State of New York, had and received a gross income of \$9,365.80; that by reason of such income he was required by law, following the close of the calendar year 1967 and on or before April 15, 1968 to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brookly, at Brooklyn, New York, in the Eastern District of New York, or to the Director, Internal Revenue Service Center, North-Atlantic Region, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well



knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States.

In violation of Section 7203, Internal Revenue Code; 26 United States Code, Section 7203.

COUNT TWO

That during the calendar year 1968, the defendant NICHOLAS L. BIANCO, who was a resident of the City of New York, State of New York, had and received a gross income of \$8,042.18; that by reason of such income he was required by law, following the close of the calendar year 1968 and on or before April 15, 1969, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, at Brooklyn, New York, in the Eastern District of New York, or to the Director, Internal Revenue Service Center, North-Atlantic Region, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to

make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States.

In violation of Section 7203, Internal Revenue Code, 26 United States Code, Section 7203.

COUNT THREE

That during the calendar year 1969, the defendant NICHOLAS L. BIANCO, who was a resident of the City of New York, State of New York, had and received a gross income of \$6,701.91; that by reason of such income he was required by law, following the close of the calendar year 1969 and on or before April 15, 1970, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, at Brooklyn, New York, in the Eastern District of New York, or to the Director, Internal Revenue Service Center, North-Atlantic Region, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said District Director of the



Internal Revenue Center, or to any other proper officer of the United States.

In violation of Section 7203, Internal Revenue Code, 26 United States Code, Section 7203.

COUNT FOUR

That during the calendar year 1970, the defendant NICHOLAS L. BIANCO, who was a resident of the City of New York, State of New York, had and received a gross income of \$9,164.97; that by reason of such income he was required by law, following the close of the calendar year 1970 and on or before April 15, 1971 to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, New York, in the Eastern District of New York, or to the Director, Internal Revenue Service Center, North-Atlantic Region, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or

to any other proper officer of the United States.

In violation of Section 7203, Internal Revenue Code; 26 United States Code, Section 7203.

COUNT FIVE

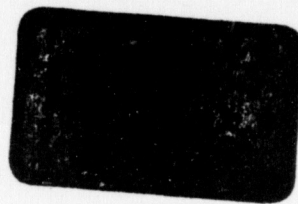
That during the calendar year 1971, the defendant NICHOLAS L. BIANCO, who was a resident of the City of New York, State of New York, had and received a gross income of \$11,515.87; that by reason of such income he was required by law, following the close of the calendar year 1971 and on or before April 15, 1972 to make an income tax return to the District Director of the Internal Revenue for the Internal Revenue District of Brooklyn, at Brooklyn, New York, in the Eastern District of New York, or to the Director, Internal Revenue Service Center, North-Atlantic Region, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Center, or to any other proper officer of the United States.



In violation of Section 7203, Internal Revenue Code;  
26 United States Code, Section 7203.

/s/ EDWARD J. BOYD V.  
UNITED STATES ATTORNEY

April 14, 1970



34

N I C A O L A S   B I A N C O,  
residing at 483 Ocean Parkway,  
Brooklyn, New York, having been  
called as a witness, having been  
duly sworn, testified as follows:

BY MR. KATZ:

Q. Mr. Bianco, this Grand Jury is investigating the alleged take over of a crime syndicate formerly headed by Joseph Bonanno in the County of Kings. There have been murders and a series of shootings which have taken place and also a conspiracy to commit murder and other related crimes such as bookmaking, traffic in narcotics, infiltration of legitimate businesses. This Grand Jury believes you might have some information which may enable this Grand Jury to further its investigation. Do you understand what I have said up to now and up to this point?

A. Yes.

Q. You are entitled certain rights before you appear before this Grand Jury. One of them is your Fifth Amendment privilege against self incrimination. Any question posed to you and your answer might degrade or incriminate you, you have the right to



refuse to answer that question. Do you understand that?

A. Yes, I understand.

Q. Also you have the right to have an attorney present outside this Grand Jury to consult with on questions posed to you and you consult with him on some or all the questions if you so desire. Do you understand that?

A. I understand.

Q. Mr. Bianco, have you retained an attorney at this time?

A. I have an attorney outside.

Q. What is his name?

A. I would like to take the Fifth and I would like to take the Fifth.

Q. The attorney's name would not incriminate you.

A. What's the difference. You are going to give me the Fifth and let me tell him and we will get along.

Q. You want to talk to your attorney?

A. I want to take the Fifth right now.

Q. All right, before we proceed, Mr. Bianco, there are certain questions like asking

you your own name and who your lawyer is. We want to show on the record that we fully have informed you of your rights. And one of your rights is to have an attorney present outside this Grand Jury. And now we would like to know his name.

A. Can I go outside and ask him?

Q. Certainly.

(The witness withdraws from the Grand Jury room.)

(The witness returns to the Grand Jury room and resumes the witness chair.)

A. (Continuing) Robert Weiswasser.

Q. Of 16 Court Street?

A. 32 Court Street.

Q. Mr. Bianco, I am now going to pose a series of questions to you concerning our investigation at this time. Do you know an individual by the name of Joseph Bonanno?

A. I take the Fifth Amendment.

Q. Do you know an individual by the name of Paul Sciacca?

A. I will take the Fifth Amendment.



Q. Do you know an individual by the name of Frank Marino?

A. I take the Fifth on that.

Q. Do you know an individual by the name of Michael Adamo?

A. I will take the Fifth on that.

Q. Do you know an individual by the name of Carlo Gambino?

A. I will take the Fifth.

Q. Mr. Bianco, if I continue to ask you questions, would you answer in the same manner?

A. I will.

Q. Mr. Bianco, I am going to request that the Grand Jury confer immunity upon you and at that time we will then proceed. I will excuse you until they decide if they want to grant you immunity.

(The witness and the Assistant District Attorney and the Grand Jury reporter withdraw from the Grand Jury room.)

(The witness and the Assistant District Attorney and the Grand Jury reporter return to the Grand Jury room.)

MR. KATZ: Mr. Foreman, has the Grand Jury voted as to whether or not to grant this witness immunity?

THE FOREMAN: Yes, we have voted and the vote was unanimous.

BY MR. KATZ:

Q. You have been granted immunity by this Grand Jury which is in the Code of Criminal Procedure under Section 619C and D. And immunity means that any matter or thing or evidence or transaction which you testify to before this Grand Jury and your answer is honest and relevant to the question posed to you by this Grand Jury, and in your answer you admit to a crime, you cannot be prosecuted for that crime. Do you understand that?

A. Yes.

Q. In other words, immunity protects you in place of your Fifth Amendment privilege.

A. I understand that.

Q. All right. Now, Mr. Bianco, I again ask you a series of questions.

A. Excuse me. Could I go tell my lawyer I got



immunity?

Q. Yes.

A. Thank you.

(The witness withdraws from the Grand Jury room.)

(The witness returns to the Grand Jury room and resumes the witness chair.)

BY MR. KATZ:

Q. Have you had time to confer with your attorney?

A. Yes.

Q. Have you informed him that you were granted immunity by this Grand Jury?

A. Yes.

Q. And he has told you to proceed at this time?

A. Just answer the truth as truthful as I possibly could answer.

Q. I am going to pose a series of questions to you at this time. Do you know an individual by the name of Joe Bonanno?

A. No.

Q. Do you know an individual named Salvatore or Bill Bonanno?

A. No.

Q. Do you know an individual by the name of James Failla also known as Jimmy Brown?

A. I think so. I may know him.

Q. He works for a management group in the commercial carting business. Garbage business.

A. The name is very familiar. Not too sure. Jimmy Brown? No, the other name.

Q. Do you know Paul Castellano of Staten Island?

A. I don't think I know. It is very hard because-- does he have a nickname?

Q. No, I don't know his nickname. Jimmy Brown comes from the Bensonhurst section of Brooklyn originally.

A. I am almost sure.

Q. Do you know Frank Mari also known as Frankie T?

A. No.

Q. Do you know Joe Diamond?

A. Not by that name.

Q. Natale Evola?



A. You see the point I don't know--like I know someone.  
I may meet them once.

Q. Do you know Phillip Restelli?

A. I don't know anyone by that name.

Q. Do you know Carlo Gambino?

A. Yes.

Q. How long have you known Mr. Gambino?

A. A few years. Maybe a little more.

Q. Would you say about five years?

A. Within the last five years.

Q. Do you know where you met him?

A. No, I don't remember.

Q. Did you meet him more than once?

A. I would say so. Yes.

Q. In a business capacity?

A. No.

Q. Socially?

A. Socially.

Q. Do you remember where these social events took place?

A. Maybe at a wedding.

Q. Were you ever at his house?

A. No.

Q. Ocean Parkway or Long Island?

A. No.

Q. Do you know what business Mr. Gambino is in?

A. No.

Q. Do you know Joseph Riccobono?

A. Again, I don't know. Like I would say, you know--

Q. Do you know an individual known as Staten Island Joe?

A. No.

Q. Do you know James Eppiscopo known also as Jimmy Legs?

A. I don't know anyone by that name. Sometimes you tell me a name, I may meet them--you know--but not someone I know. If I know the person I would tell you I know him.

Q. Do you know anyone by the name of Aniello Dellacroce?

A. Not by that name.

Q. Did you ever see Dellacroce?

A. If I don't know him by that name, how could I?

Q. Did you ever see him about ten or fifteen minutes ago?

A. I don't know. Is he the fellow with the glasses?



Q. No, the first one that was dismissed today.

A. No.

Q. Do you know Frank Mari?

A. No.

Q. Did you ever hear of Frank Mari?

A. I heard just what I read in the paper. That's all. That's about all.

Q. What business are you in?

A. Well, I am a gambler.

Q. A professional--

A. To the race track.

Q. In other words, are you strictly in the race track end?

A. That's all.

Q. Do you specialize in the trotters or the flats?

A. Flats.

Q. Did you ever go to the trotters?

A. Never--once in a great while.

Q. Do you frequent Belmont or Aqueduct?

A. That's it.

Q. Ever go outside New York State?

A. You mean to the race track? Maybe. Sometimes.  
To New England race track once in a while.

Q. How well do you do at the track?

A. Fairly well.

Q. Do you file income tax returns?

A. No.

Q. In other words, you do just enough to  
get by?

A. Yes, that's about it.

Q. How long have you been doing this,  
Mr. Bianco?

A. Quite a number of years.

Q. More than five years?

A. Yes.

Q. How old are you?

A. I am thirty-eight.

Q. Were you ever in any business of any  
sort or ever work for any firm?

A. I might have worked '49 and '50. Not too sure.  
I worked a time maybe four weeks. Two weeks.

Q. You were a teenager when you might  
have worked?

A. You know--from school. Something like that.

Q. After you left school or graduated from

high school--

A. Later. I didn't graduate. I left in the tenth grade.

Q. What did you do after you left? You went to the track a lot?

A. I got a job. Worked a few weeks. Not much.

Q. When did you start really gambling on the horses? Just a few years back?

A. I would say quite a few years back. I would say '56 or '57. Around there.

Q. And you have supported yourself and your family on this?

A. Just recently got married. I was a bachelor.

Q. Does your wife know what type of work that you are in?

A. No.

Q. Are you also a bookmaker?

A. No.

Q. This is your sole source of income going to the track?

A. Yes.

Q. What did you do with your spare time when you don't go to the track?

A. I do whatever I want to do.



April 14, 1970

46

Q. You don't work at all?

A. No.

Q. At anything?

A. Nothing.

Q. Do you know Joseph Columbo?

A. Yes.

Q. How long have you known Mr. Columbo?

A. I know him very well today but I don't know the length of time. The length of time--it is very difficult.

Q. To the best of your knowledge or belief.

A. Five years. Maybe longer. It could be ten.

Q. Today you say you are pretty friendly with Joe Columbo? You know him pretty well?

A. Yes.

Q. Where did you first meet Joe Columbo?

A. I don't remember.

Q. Have you been to his house much?

A. I go occasionally.

Q. What business is Joe Columbo in?

A. As far as I know he is a real estate broker.

Q. Had you ever been to his office on 86th Street?

A. Yes, I have.

Q. Do you own your own home, Mr. Bianco?

A. No.

Q. Do you hang out with Joe Columbo much?

A. I see him most every day. Hanging out? I don't think--see him almost every day. Can't say. It all depends.

Q. I would like to inform you at this time just for your own edification that there are only two crimes for which you can be convicted after having been granted immunity. One is where you tell a falsehood and commit perjury. And secondly; where you refuse to answer a question and that is contempt. Do you understand that?

A. I understand.

Q. Were you ever a member of a crime syndicate in the past or are you a member at the present?

A. Never.

Q. Never a member of an organized crime syndicate?

A. No.

Q. Do you believe that there is an organized crime syndicate operating in the City of New York



especially in the County of Kings?

A. I read about it. Every day. I can only go by what the papers tell me.

Q. You are a man and you know how to reason. And you understand pretty well. You seem to indicate that to the Grand Jury. And in your opinion from your knowledge would you say there is an organized crime syndicate which operates in New York City and in the County of Kings?

A. I read the newspapers.

Q. Your own knowledge.

A. I am doing that. You ask me for an opinion.

Q. What is your opinion?

A. My honest opinion? I don't believe it. And I will tell you further because they accuse me. Like you are asking me and I know I am not. So whatever I read in the paper I have to say that is wrong. I have to say no but if they didn't accuse me, then I would go along with that with what you think.

Q. Do you know Joe Columbo is reputed to be head of a crime syndicate? Do you know Joe Columbo to deny that he is the head--

A. I can speak for myself and not for anyone else.

And the word is alleged and reputed. And no one to say there is at all a Mafia. None has ever said it yet.

Q. Mr. Bianco, did you ever have any prior brushes with the law at all?

A. Yes. Brush? You mean offense and so forth? Yes, I do.

Q. Were you ever arrested and locked up?

A. Yes.

Q. Did you ever do any time?

A. Yes.

Q. How many years have you done?

A. I did two years for army. I did time. Small time. You know.

Q. Do you owe anybody any money?

A. My landlord. I guess people like that.

Q. Like you say your sole source of income is from the track?

A. Yes.

Q. You say you are a consistent winner but sometimes you have bad streaks do you not?

A. Not really bad.

Q. Do you ever borrow money from Joe Columbo?



A. No.

Q. Or from anyone?

A. No.

Q. No outstanding personally loans?

A. None.

Q. None to the bank?

A. No.

Q. Do you own a car?

A. Yes.

Q. Is this a brand new car?

A. A '69 Buick.

Q. And paid for? That in cash I presume?

A. No.

Q. Did you buy it from Kaplan Buick?

A. Yes.

Q. You haven't filed a tax return for many years now?

A. True.

Q. You realize that when you win money at the track, you are supposed to report it as income? Do you understand that?

A. I don't know. I have to speak to my attorney about it.

Q. The question was asked: Do you realize



that you are supposed to report your winnings at the track on an income tax?

A. All right.

(The witness withdraws from the Grand Jury room.)

(The witness returns to the Grand Jury room and resumes the witness chair.)

BY MR. KATZ:

Q. Did you consult with your attorney?

A. Yes. And Mr. Weiswasser told me whatever winnings I did win at the race track I should have filed tax on it.

Q. Did you go to the track last week?

A. No, haven't been there this year.

Q. What was the biggest horse you ever had?

A. This is going back--I don't have figures off hand.

Q. If you haven't been there this year, how do you earn your money?

A. The money I had from last year I still live on this year.

Q. You bought a Buick from Kaplan, you said.

A. Yes.

Q. How much did you pay for the car?

A. Total amount I don't know. They run--but it is-- it's a new Buick. Five thousand. Fifty-two.

Q. Did you pay cash for it?

A. No, I didn't. I got it on time payments.

Q. Are you paying it off presently?

A. Yes.

Q. Mr. Bianco, does your wife work?

A. No, she is a home maker.

Q. Did you get a bank loan or is this a loan made directly by Kaplan Buick when you bought the car?

A. When I bought the car, they made the arrangements with Bankers Trust.

Q. You are paying off Bankers Trust? How did you get the loan without a job? You must have filled out an application for a loan.

A. I tell you. I went in. I have a Buick a long time. And went in back to the same company. And they finance it for me some how. You know. You know how they do it. I don't know. Maybe I could find out for you by the next time if you want to.

Q. We will appreciate it, Mr. Bianco.



A. All right.

BY A JUROR:

Q. When you apply for a loan and to pay off for a car, in the application doesn't it ask you what occupation you are in?

A. I really couldn't answer you now, but next time I will try to find out for you. It has been a year and a half. Maybe eighteen months. I don't remember.

Q. When you make your monthly payment on the car, do you pay by check or cash?

A. I bring it to Kaplan Buick and they make me out a receipt. And they forward it to the bank. They have the receipts there.

BY MR. KATZ:

Q. Is that by cash?

A. I pay them cash. Yes. They give me a receipt and they forward it whatever bank it may be. I am pretty sure it is Bankers Trust.

MR. KATZ: All right. You are excused.

(Witness excused)

(IN PART)



April 28, 1970

NICHOLAS BIANCO,  
residing at 483 Ocean Parkway,  
Brooklyn, New York, having been  
recalled as a witness, having been  
duly sworn, testified as follows:

By Mr. Kitz:

Q Mr. Bianco, you previously appeared before this  
grand jury on April 24th and were granted immunity and you  
testified, is that correct, sir?

A That is correct.

Q Mr. Bianco, do you have an attorney present at  
this time?

A Yes.

Q What name, sir? For the record?

A Louis Weisswasser.

Q What is Court St., Brooklyn?

A I think so, yes.

Q Mr. Bianco, is he present outside the grand jury  
room today?

A Yes.

Q Do you want to state something to the grand jury?

A Yes, we're discussing the fact that I should get  
questions, the questions you're about to ask me, I should  
receive them before I enter this room and he thinks that I

should say to you before we do any questioning until he looks it up officially.

Mr. Bianco, at this time I am going to inform you that you have been granted immunity under the Code of Criminal Procedure of the State of New York, Section 619 C and D which means this, that any matter, thing or evidence that you present before this grand jury or testify to, and to which your answer is honest and relevant to the questions posed to you, you cannot be prosecuted for the crime that you admit to in your answer, do you understand that, sir?

A I understand.

Mr. Bianco, last time you stated that you knew Joseph Colombo.

A Yes, I did.

How long have you known Mr. Colombo?

A A few years, I'd say.

Also, you stated at that time that you're a professional gambler.

A I don't play the horses.

In other words, is that the only form of gambling that you do for a living?

Which track do you frequent, sir?

A Aqueduct. Mostly Aqueduct.



Q When was the last time you were at Aqueduct?

A Last year.

Q You haven't gone this season?

A No, I haven't.

Q Where did you get your source of income to live on for this year?

A From the race track last year.

Q How much did you win last year?

A I don't know. I never count how much I won. I don't keep any savings.

Q Do you have any savings accounts?

A No.

Q Checking accounts?

A No checking accounts.

Q Where do you keep your money in order that you can draw on it or live on it?

A I don't know if I should answer. Can I go out and consult with my attorney?

A Surely.

SA. KALZ: Let the record note that the witness is leaving the room to consult with his attorney. (Whereupon, the witness left the grand jury room.)



(Hereupon, the witness returned to the grand jury room.)

A [redacted] conferred with my attorney and he said that he doesn't think that this is in the scope of the grand jury to answer this question.

Q Mr. Bianco, at this time I'd like to inform you that you have been granted immunity and there is only two crimes that you can be charged with and convicted of. One is perjury. If you give false answers to questions that are asked to you by this grand jury or you refuse to answer a question that is asked to you.

A I don't want to refuse to answer. I only think that it is not permissible to answer this question.

Q In other words, on the advice of counsel you're not going to answer this question?

A If I have to, I will, but I don't think I have to.

Q I'd like to inform you that this matter, after we finish with your testimony on this occasion and it is evaluated, the district attorney may serve papers on you or your attorney to litigate this matter to determine whether this question is valid to the investigation or not, sir, do you understand that?

A Not too well.

In other words, when the district attorney may do, if he wishes to answer that question, he may draw up papers and go for contempt. You're not convicted of contempt. I'll litigate that matter before a judge to determine whether you have to answer that question.

It is within the scope of this grand jury I'll answer. I feel it is not within the scope, that's all.

Mr. Sianco, your objection to the question it is not being relevant to this investigation is noted. I am going to ask you again, where do you keep your money in order that you can live on it?

I don't think it is within the scope of this grand jury. If it is within the scope I'll answer it.

Mr. Sianco, do you owe people any money at this time?

I owe for my car, you know. Personal monies I don't owe anybody.

Do any people owe you money?

No.

→ Do you in the loan business at all?

No.

Do you go to the tack by yourself?

Well, sometimes I will go with another fellow.

mostly by himself.

Q Do you know Joseph Cantalupo?

A No. Do you ever go to the track with Joseph Cantalupo?

A I don't know. I might have.

Q To the best of your memory, sir?

A To the best of my memory I may have to the best of my memory.

Q Do you ever go to the track with Joseph Colombo?

A No.

Q Do you ever gamble with Joe Colombo?

A No.

Q Do you know Frankie F.?

A I don't know any one by that name.

Q Frank Ferri?

A I don't know any one by that name.

Q Big Brown, known as James Failla, a little short fellow who smokes cigars?

A I can't place any one by that name. I can't recall.

Q Bill Castellano?

A I don't know any one by that name.



1  
Q To the best of your memory--  
A Best of my memory, I may know them but with  
out names--if they have nicknames maybe you help me a  
little.

Q Do you know Angelo Sporaco (phonetic spelling)?

A I don't know anyone by that name.

Q Do you know Milton Silverman?

A I don't know anyone by that name.

Q Joe Diamond?

A I don't know anyone by that name.

Q Antale Evola?

A I don't know anyone by that name.

Q Philip Mastelli (phonetic spelling)?

A I don't know anyone by that name.

Q Joseph DeFillipi?

A He is a short man?

Q A curly fellow?

A I was here with him last week. Last week or  
the week before he was sitting out here. I know. He  
was here, he was sick. They dismissed him. He was very  
sick outside.

Q Do you know an individual named Carlo Gambino?

A Yes.

Q How long have you known Mr. Gambino?

A. About a few years.

Q. Over five years?

A. Well, over three years, you know.

Q. How old are you?

A. I'm thirty-eight.

Q. You say you have known Mr. Gambino approximately three years?

A. I say I know him longer than that.

Q. It is at least three years?

A. I do know him at least three years, I'd say. It may be ten years. I don't know. There is no extent of time. When I say I am just trying to give you a little scope of--

Q. Have you ever been over to his house at Ocean Parkway?

A. No.

Q. Long Island?

A. No.

Q. Where do you know Mr. Gambino from?

A. I met him at a wake, maybe. Social events. Socially, I know him.

Q. When was the last time you met Mr. Gambino?

A. Last time was Sunday.

Q. Or last Sunday?



Yes.

Where, sir?

At a christening.

Whose christening?

Anthony Colombo's son or daughter. Daughter, I think.

Is that any relation to Joe Colombo?

Is it his son.

Was Joe Colombo present?

Yes.

Mr. Gambino was present?

He was there for a short time, yes.

Did Mr. Colombo and Mr. Gambino talk?

I imagine they did. I don't know.

Did they go into a private conversation?

Not to my knowledge. I didn't notice.

Mr. Bianco, do you play cards at all?

Merely I play cards.

When was the last time you actually worked?

In other words, that you drew a salary or you owned a business? Do you remember, sir?

I was in a little business a few years ago, Easy Floor waxing. It didn't materialize. Before that I can't recall. It was many years before that.



Q. Mr. Bianco,--

A. I'd work many years ago but I don't remember exactly the details of it.

Q. Mr. Bianco, you tell this grand jury that you make your living primarily from the track, you don't work and you haven't been to the track since last season which was in 1969 at Aqueduct.

A. Yes.

Q. What do you do with your days? Like today, for instance, yesterday. What did you do yesterday if you don't go to the track, you haven't been there, what do you do with your time?

A. There is nothing on record that I could do with my time. I don't know exactly what I do with my time. I run around for my family, do things.

Q. Are you married, Mr. Bianco?

A. Yes, I am.

Q. Any children?

A. Two children.

Q. You must win quite heavily at the track, sir?

A. I win.

Q. I think I asked you this last time. Did you file Federal income taxes on your winnings?

A. No, I didn't.

Do you intend to?

I don't think so. I don't know. I may and I may not. It is in the future, I don't know.

Mr. Bianco, I am going to ask you again, where do you keep or draw your source of income so that your family can live if you have no bank accounts, no checking accounts.

I refuse, until we settle this with a judge. I guess that's what has to be.

Your objection is 'cause this question is not within the scope of this investigation?

Yes, if it is I'll answer it.

Do you know a fellow by the name of Anthony Lobello (phonetic spelling)?

A I don't know anyone by that name.

Do you know Salvatore Magadino (phonetic spelling)?

A I don't know anyone by that name.

Do you know an individual named Guy Muscillo?

A I don't know anyone by that name.

Do you belong to any social clubs? Are you a member of any social clubs?

A Not to my knowledge, no. I really can't think of any.



Q Ocean Parkway, is that an apartment house?

A Yes.

Q Is that a new apartment house?

A Yes. I don't know exactly. I'd say, I don't know.

Q How much rent do you pay approximately, Mr. Bianco?

A Well, I ask my attorney if this is within the scope of this investigation.

Q Yes.

Mr. KATZ: Let the record indicate that the witness is now leaving the grand jury room to consult with his attorney.

(Whereupon, the witness left the grand jury room.)

(Whereupon, the witness re-entered the grand jury room.)

A I pay \$215.00 a month.

Q All right, do you pay in cash or by check?

A I pay in cash.

Q How long have you been living at 483 Ocean Parkway?

A Well, I was living there. See, I had two apart-



ment. In the same building, I was a bachelor upstairs and then, when I got married, I moved upstairs. I really don't know how long, four or five years, maybe a little more. I don't know.

Q Do you know who owns the building?

A I don't know. I think it is Pea Bean Corp. That's just the sign that's on there. I don't know if those are the exact owners.

Q Who do you deliver the money to when you pay the rent?

A Mr. or Mrs. Belini.

Q Who are they?

A Sometimes they say they're Pea Bean Corporation. They're either the supers, if you ring the super's bell, they will answer. Some people think they're the owners of the building. I don't know for sure.

Q Is he the superintendent?

A Yes, but if you ring the super's bell he will answer and give you the rent.

Q Does he give you a receipt for it, sir?

A Yes, he does.

Q You don't know who he turns it over to?

A No, I don't.

MR. KATZ: Mr. Bianco, at this time

I am going to ask you to leave,  
you're excused.

(Witness excused)



1  
2 THE CLERK: Criminal cause pre-trial conference,  
3 U.S.A. v. Nicholas L. Bianco.

4 MR. LA ROSSA: Good morning, your Honor.

5 THE COURT: Good morning, gentlemen. Is  
6 everybody ready here?

7 MR. LA ROSSA: I believe we are.

8 MR. McCAFFREY: We have witnesses and we  
9 are ready to start.

10 MR. LA ROSSA: I think we can begin it.

11 THE COURT: I have a case, United States  
12 against Ross which we may have to go ahead with  
13 and pick a jury this afternoon. Mr. Grunewald is  
14 on trial before Judge Weinstein and I plan to go  
15 ahead with that case. There's an attorney up  
16 from Florida --

17 MR. LA ROSSA: I think it may make some sense  
18 to go ahead because I see the necessity for some  
19 reports and papers: some documents --

20 THE COURT: Well, right after I call the  
21 Ross case we will get back to you and proceed.

22 (Recess taken)

23 THE COURT: Now gentlemen, let's make sure  
24 I understand all the issues here.

25 It is my recollection -- correct me if I am



1  
2 wrong -- that the hearing is to determine whether  
3 either in one or more Grand Jury proceedings the  
4 Government got the information which led to this  
5 indictment.

6 MR. LA ROSSA: That's basically correct.

7 Our contention is that at the time of a  
8 state Grand Jury proceeding, when the defendant  
9 was immunized questions were asked of him with respect  
10 to income tax and returns and the source of the  
11 income and it is defendant's contention that that  
12 information became cooperative with respect to the  
13 other agencies.

14 THE COURT: It is my understanding that the  
15 burden is on you, Mr. La Rossa so why don't you  
16 proceed first.

17 MR. LA ROSSA: I will do that in accordance  
18 with the direction of the Court but I do not believe  
19 the burden rests with us.

20 I think under Murphy against the Waterfront  
21 Commission the burden is on the Government to prove  
22 that none of the leads gained in the state proceedings  
23 were used for other indictments.

24 THE COURT: Do you agree with that?

25 MR. MCCAFFREY: I am prepared to conduct

1 the direct examination of the witness, your Honor --

2 THE COURT And I can then decide who has  
3 the burden.  
4

5 MR. McCAFFREY: Yes, your Honor can do that  
6 and I think it might lead to more orderly procedure  
7 to go ahead in that fashion --

8 THE COURT: We will proceed that way --

9 MR. McCAFFREY: (continuing) So you can see  
10 the outline of the Government's position.

11 THE COURT: Since this is going to be truncated,  
12 will you furnish me with a copy of the transcript?

13 MR. McCAFFREY: Yes, the Government will order  
14 a copy.

15 MR. LA ROSSA: At this time, your Honor, may  
16 I request that all witnesses be excluded from the  
17 courtroom?

18 THE COURT: Yes.

19 MR. McCAFFREY: The Government calls Mr. Nahmias.

20 L O U I S N A H M I A S, having first  
21 been duly sworn by the Clerk of the Court took the  
22 witness stand and testified as follows:

23 THE COURT: Mr. La Rossa, this is Mr.  
24 Bianco alongside of you?

25 MR. LA ROSSA: It is.



THE COURT: I just want to make sure the record shows the defendant is here.

DIRECT EXAMINATION

BY MR. McCAFFREY:

Q Mr. Nahmias, what is your business or occupation

A I am a Special Agent with the Intelligence Division of the Internal Revenue Service.

Q For how long have you been employed?

A For 19 years.

Q What are your duties with the Internal Revenue Service?

A I investigate criminal tax fraud cases.

Q Did there come at time when you were assigned to conduct an income tax investigation concerning one Nicholas Bianco?

A Yes.

Q Can you tell us when the Bianco case was first assigned to you?

A Approximately, June of 1971.

Q What information was made available to you at the time the case was assigned to you?

A I was advised that Mr. Bianco had not filed returns for the years 1967, 1968 and 1969.

I was advised that he was involved in organized



1  
2 crime and also that our files showed that Mr. Bianco was  
3 previously investigated by our division for failing to file  
4 returns for the years 1964, 1965 and 1966.

5 Q What was done as a result of that previous inves-  
6 tigation concerning '64, '65 and '66?

7 A Well, after that investigation there was no recom-  
8 mendation of criminal prosecution and the case was then sent  
9 to the audit division to do whatever is appropriate; whatever  
10 has to be done.

11 THE COURT: Were you the agent on the prior  
12 investigation?

13 THE WITNESS: No, I was not.

14 THE COURT: Who was?

15 THE WITNESS: His name was Anthony Langone.

16 THE COURT: He recommended no prosecution?

17 THE WITNESS: Yes.

18 He recommended that the case be closed because  
19 there was insufficient evidence to secure an indictment.

20 Q Were you aware at any time Mr. Nahmias, during the  
21 course of your investigation, that Nicholas Bianco had appear-  
22 ed and testified before a Kings County Grand Jury in the  
23 spring of 1970?

24 A I was not.

25 THE COURT: What date was that?

MR. MCCAFFREY: The spring of 1970, your

Honor.

Q Were you aware that he had ever appeared and testified before a Kings County Grand Jury at any time?

A I was not.

Q At any time during your investigation did you ever receive any information from anybody connected with the Kings County District Attorney's office?

A I did not.

Q Were you aware, Mr. Nahmias, that during the course of your investigation -- were you aware that Mr. Bianco had appeared and testified before a federal Grand Jury for this district?

A I was not aware of that either.

Q I refer specifically to his Grand Jury appearance in December, 1969 and January, 1970.

A I had no knowledge of that.

Q Were you aware that he had ever appeared and testified at any time before a federal Grand Jury in this district?

A I was not aware of it.

Q Have you recently read the minutes of Mr. Bianco's Grand Jury testimony in December, 1969 and January, 1970?

A I did.

THE COURT: When?



THE WITNESS: Yesterday afternoon.

THE COURT: That is the first time?

THE WITNESS: Yes.

Q Having reviewed those transcripts, Mr. Nahmias, can you tell us whether at any time you received any information from Strike Force Attorney James Druker, concerning the contents of Mr. Bianco's testimony?

A There was nothing in that testimony which was disclosed to me during the investigation.

MR. McCAFFREY: Thank you.

I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. LA ROSSA:

Q Mr. Nahmias, you didn't choose Mr. Bianco's name, did you?

A No, I did not.

Q Who chose his name for you to make an initial determination on as to whether or not he had violated the Internal Revenue Service Laws?

A I don't know. I just know the case is assigned to me and I'm told to investigate it.

Q How is it assigned to you?

A Well, it comes from the front office of the Intelligence Division in a folder with certain information on it and



1  
2 they say "Go out and investigate it."

3 Q Who opened the file?

4 A Which file? This folder --

5 Q The file referred to you with Mr. Bianco's name  
6 on it-- who initiates that file?

7 A That comes from our front office.

8 Q Mr. Nahmias, would you show us, if you can, please,  
9 a letter or memorandum addressed to you which was the initial  
10 matter that you saw that began your investigation of this  
11 particular case.

12 A I don't have such a letter with me. I don't have  
13 the file with me.

14 THE COURT: Do you recall who signed it?

15 THE WITNESS: Usually, the supervisor will  
16 sign it.

17 THE COURT: Who is your superior?

18 THE WITNESS: At that time it was Joseph  
19 Delfino.

20 THE COURT: Where is the file that would  
21 show this?

22 THE WITNESS: In our office.

23 THE COURT: By telephone call, can you get it  
24 over here?

25 MR. LA ROSSA: I think it is imperative,

Nahmias/cros.

your Honor.

THE COURT: I do too.

THE WITNESS: I guess I could get it.

THE COURT: We will take a five minute recess and you go and make a telephone call and get your file.

THE WITNESS: Okay

(Recess taken)

(After recess)

MR. McCAFFREY: Your Honor, agent Nahmias has gotten the file from the Internal Revenue Service and I have examined it and the documents are all internal government documents not discoverable by defense counsel.

THE COURT: I am not going to ask him to produce the file.

Mr. La Rossa asked how it started and I think he is entitled to that.

MR. McCAFFREY: The Government has no objection to exhibiting that to defense counsel or for that matter, putting it in the record.

THE COURT: Yes. He is not going to go waltzing through the file if that is what you are worried about and for that matter, I don't think he



anticipates that.

MR. LA ROSSA: Would your Honor instruct the witness to keep the file with him though, because I will refer to things that he may require the file for in order to answer.

THE COURT: Oh, yes.

MR. LA ROSSA: Is this the one I may look at, Mr. McCaffrey?

MR. McCAFFREY: Yes.

THE COURT: Why not mark it for identification.

THE CLERK: Defendant's exhibits A and B for identification.

(So marked)

LOUIS NAHMIA S, having been previously duly sworn by the Clerk of the Court resumed the witness stand and further testified as follows:

CROSS EXAMINATION

BY MR. LA ROSSA CONTINUING:

Q Are you ready to proceed, sir?

A Yes, go ahead, sure.

Q Mr. Nahmias, can you tell me what that top line on defendant's exhibit A reads? I refer you right to here (indicating).

1  
2 A This says, "11-82185-6" and I don't know what  
3 "C.D." is but it says "3/5/70; S.A. Langone." That means  
4 there was a prior investigation and Special Agent Langone  
5 had the investigation and that was the number of the inves-  
6 tigation.

7 Q Who is Thomas J. Smith?

8 A Smith?

9 Q Thomas J. Smith.

10 A I don't know.

11 Q I show you what has been marked defendant's exhibit  
12 B. Does it refer to the referring agent as Thomas J. Smith?

13 A Oh, Thomas J. Smith is a Revenue agent that handled  
14 the audit.

15 THE COURT: Which audit -- the Langone audit  
16 or yours?

17 THE WITNESS: No.

18 These years were under audit by the audit  
19 division and subsequently agent Smith sent it down  
20 to Intelligence for investigation. That is how it  
21 initiated.

22 THE COURT: Oh, it came from the Revenue agent,  
23 not your superior.

24 THE WITNESS: Well, it comes from the audit  
25 division to the Intelligence division and my superior



assigns it to the agents.

3 Q So, before you proceeded in this matter you had  
4 before you the Langone investigation and the investigation  
5 of Thomas J. Smith, the Revenue agent?

6 A Yes.

7 Q Is that correct?

8 A Yes.

9 Q Where is Thomas J. Smith assigned?

10 A He is assigned to the Brooklyn office here.

11 Q Does he have anything to do with the Strike Force?

12 A I don't know.

13 THE COURT: You mean he is in the building  
14 next door?

15 THE WITNESS: He is a Revenue agent working  
16 here in Brooklyn.

17 At the time I don't know if he had anything  
18 to do with the Strike Force. He might have.

19 Q It is true that Special Agents and Revenue Agents  
20 over the years, have been assigned to the Brooklyn Organized  
21 Crime Task Force?

22 A Yes.

23 Q Is it your testimony then that you are not aware,  
24 one way or the other, as to whether Mr. Smith was ever assigned  
25 to the Organized Crime Task Force?

1  
2 A I believe he was.

3 Q You think he was assigned?

4 A Yes.

5 Q Do you think he was assigned prior to the time you  
6 received the revenue report in this particular matter?

7 A I don't know if he was but he probably was at the  
8 time that case was referred to us.

9 THE COURT: Had you ever discussed the case  
10 with him?

11 THE WITNESS: Well, it is really not relevant  
12 as to whether --

13 THE COURT: The question is, had you ever  
14 discussed --

15 THE WITNESS No.

16 Q You never spoke with Mr. Smith from the day --

17 A Oh, yes.

18 Q When was the first time you spoke with Mr. Smith  
19 about Nick Bianco?

20 A Soon after I got the case.

21 Q What does that mean in terms of time?

22 A August or September, 1971.

23 Q Was Mr. Smith at that time assigned to the Organized  
24 Crime Task Force?

25 A I am speculating but he probably was.



1

2

THE COURT: Do you know?

3

THE WITNESS: I don't know.

4

THE COURT: All right. Don't speculate.

5

Q Where did you meet Mr. Smith on that occasion?

6

A In our office.

7

Q Did he discuss any of the background of Mr. Bianco

8 with you?

9

A Yes.

10

Q Did you receive any of the information which you told

11 us about a few moments ago from Mr. Smith? For example, that

12 Mr. Bianco was involved in organized crime?

13

A Did I get that from Mr. Smith?

14

Q Yes.

15

A I don't know if I got that from Mr. Smith. I might

16 have.

17

Q Did you get any information from Mr. Smith that Mr.

18 Bianco had not filed tax returns for the years '67, '68 and

19 '69?

20

A Yes, I did.

21

Q So, the very first information you got with respect

22 to Bianco not filing for '67, '68 and '69 was from Thomas J.

23 Smith, the Revenue Agent?

24

A Yes.

25

Q Did you have any conversations with Mr. Smith about

Mr. Bianco's method of earning monies at that time?

A I probably did, yes.

Q Well, do you have a memorandum or something?

A No.

Q You have nothing in the file about your conversations with Mr. Smith?

A No.

Q Did you have a report from Mr. Smith?

A No.

THE COURT: He had not written a report?

THE WITNESS: No. He hadn't completed the audit.

Q Did he show you any portion of what he had done with respect to the Revenue Agent's report?

A No.

Q Tell us what he told you about Bianco's methods of earning a living at that time?

A He told me he had contacted Mr. Bianco in order to determine what his income was for those years and he had gone down to Mr. Bianco's attorney's office, whose name was Weiswasser -- I don't know if Mr. Bianco was there or not -- and he was asking them questions concerning his earnings for those years.

Mr. Weiswasser wasn't sure whether this was a



1  
2 criminal investigation or not -- and I am only talking about  
3 Smith -- and as a result they gave him almost no information.  
4 So, he referred the case to us.

5 Q Did he ever tell you anything about Mr. Bianco's  
6 methods of earning monies during the years '67, '68 and '69?

7 A I don't know. I can't recall.

8 Q You have no recollection of that at all?

9 A No.

10 Q Have you seen the Government's answering affidavit  
11 in this case with respect to the motion that is pending before  
12 the Court?

13 A No, I have not.

14 Q Have you seen any reference to loansharking activ-  
15 ity with respect to anyone here?

16 A I have heard loansharking is one of his methods  
17 of earning income.

18 Q Where did you hear that from?

19 A Well, I don't know. I might have gotten it from  
20 Smith. I might have gotten it from Langone's prior report.  
21 I don't know.

22 Q How many times did you confer with Mr. Smith?

23 A On several occasions.

24 Q More than one, I assume.

25 A Yes.

1  
2 Q More than two?  
3 A Yes.  
4 Q As many as five or six?  
5 A I would say so, yes.

6 Q And the major part of the information you got with  
7 respect to Mr. Bianco at the beginning, was from Smith?

8 A Yes.

9 Q And you are telling us you never took a note on  
10 any of the conversations?

11 A No. Why would I have to? He is another Revenue  
12 employee. I don't make notes when I talk to another Revenue  
13 officer. When I talk to a witness or a taxpayer then, of  
14 course, I would make notes but not in the course of conver-  
15 sation with another Revenue employee.

16 Q And you know that any files you have with respect  
17 to this case contain no memorandum from Smith nor any notes  
18 with respect to any conversations you had with him?

19 A I know of no notes and so far as memorandum --  
20 maybe there's memorandum in the audit division files but I  
21 don't know.

22 THE COURT: Did you ever see an agent's  
23 report from Smith?

24 THE WITNESS: No. He never prepared a  
25 report.



1  
2 THE COURT: Not to this day?

3 THE WITNESS: No. The case is still open.

4 It has not been closed.

5 Q Did you have a conversation with Mr. Smith about  
6 Bianco's being a horse player?

7 A No. I don't recall that.

8 Q You are sure?

9 A Yes.

10 Q Did you have a conversation with Mr. Smith about  
11 Mr. Bianco being a gambler?

12 A I don't recall whether I had that conversation  
13 with him but that seemed to have come up; that he was in  
14 the loan sharking and gambling business. That does seem to  
15 come to mind.

16 Q Did Smith tell you that his sources of income were  
17 from gambling and loan sharking?

18 A He might have told me that.

19 Q Will you please reflect upon it now and tell us  
20 whether your recollection is that he told you that in one of  
21 your initial interviews, Mr. Nahmias.

22 A I am sure we discussed his sources of income and  
23 he may have disclosed that those were his sources of income  
24 -- gambling and loan sharking.

25 Q Did he disclose that to you before you began your

1  
2 investigation in the case?

3 A No.

4 Q When was it disclosed to you?

5 A After I got in the case.

6 Q A week after?

7 A No, August or September of 1971 or whenever I had  
8 conversations with him.

9 Q Tell us now, when, for the first time, he disclosed  
10 to you the sources of income that Mr. Bianco had during those  
11 years?

12 A I can't tell you that.

13 Q Will you tell me why the prosecution, for failure  
14 to file for '64, '65 and '66 was not followed through?

15 A For '64, '65 and '66? Yes.

16 Q There was insufficient evidence to prove a criminal  
17 case against Mr. Bianco.

18 Q In what respect, Mr. Nahmias?

19 A They were not able to find enough expenditures on  
20 the part of Mr. Bianco to show that he had sufficient income  
21 to file returns for those years.

22 Q Have you reviewed that file before you came in here  
23 today?

24 A I looked at the file a week or two ago.

25 Q Was there also a question about his source of income?



1 A There might have been. I couldn't say.

3 Q Is that file readily available to you?

4 A It is not readily available. It is in our record  
5 center now.

6 Q But you can get it?

7 A Yes, I can get it.

8 Q Wasn't the source of income an important factor  
9 to you as a Special Agent in preparing a 7203 violation?

10 A One of the elements that we are required to prove,  
11 is a source, yes.

12 Q And isn't that one of the factors that led to your  
13 not prosecuting Mr. Bianco for the years '64, '65 and '66--  
14 when I say "you" I refer to the Service, not you personally.

15 A I don't really recall if that element was lacking  
16 in that particular case but I recall that the amount of expen-  
17 ditures was very small and as a result there was no prosecu-  
18 tion recommended.

19 Q What else did Mr. Smith tell you?

20 A In what respect?

21 Q With respect to Mr. Bianco?

22 A Nothing -- that when I got enough sufficient evi-  
23 dence of income on Mr. Bianco's part that he will now set up  
24 a Revenue Agent's report in that respect.

25 Q That is the only other thing he told you?

1  
2 A That's all I can recall.

3 Q Did he tell you where Mr. Bianco lived?

4 A Yes. That was on the assignment slip.

5 Q Did he tell you anything about his living habits?

6 A No.

7 Q Did he tell you whether he was married?

8 A I don't recall.

9 Q Did he tell you whether he had a family?

10 A I don't recall that.

11 Q Did he tell you places where Mr. Bianco was likely  
12 to be seen?

13 A I don't recall that.

14 Q None of that.

15 So, as you sit there now, you know that Thomas Smith  
16 told you just the few things you told us he told you on those  
17 interviews and nothing else.

18 A More or less.

19 Q Where is Mr. Smith now?

20 A Probably out in the field.

21 Q Is he working for Internal Revenue Service at the  
22 present time?

23 A Yes.

24 Q Have you ever been assigned to the Organized Crime  
25 Task Force, Mr. Nahmias?



2 A Yes I have.

3 Q When was that?

4 A I was there at the time that this case was  
5 assigned to me.

6 Q When before that?

7 A Well, I was probably in there maybe a year or two  
8 before.

9 Q Tell us when it is your belief you were assigned  
10 to the Brooklyn Organized Crime Task Force?

11 A I would say offhand, maybe 1968, approximately.

12 THE COURT: Until what date?

13 THE WITNESS: I am still in it.

14 THE COURT: Oh, you're still in it.

15 Q How many other special agents are assigned to the  
16 Brooklyn Organized Crime Task Force?

17 A How many?

18 Q Yes.

19 A Maybe another twenty.

20 Q So, there are approximately twenty special agents  
21 assigned to the Brooklyn Organized Crime Task Force.

22 A Yes.

23 Q When were you assigned to the Bianco case?

24 A Approximately June of -- actually, the case was  
25 first assigned to another agent with whom I was working and

1  
2 then in September of 1971 I got the case.

3 Q Who was the other agent that it was assigned to?

4 A Silverman, Sol Silverman.

5 Q When was he assigned to the case?

6 A June, 1971.

7 THE COURT: Is he still with the Service?

8 THE WITNESS: Yes.

9 THE COURT: Is he assigned to this Task Force?

10 THE WITNESS: Yes, at that time he was.

11 THE COURT: Is he now?

12 THE WITNESS: No.

13 Q Are there letters then, sir, in addition to those  
14 two that assigned Mr. Silverman?

15 A Yes. I will show you where they assign the case  
16 to Mr. Silverman.

17 "Assign to Sol S. Silverman" and this is his  
18 supervisor, Jerry Hart. It was assigned to him on 6/9/71.

19 We were in the same group working together. Mr.  
20 Silverman was involved in something else and as a result they  
21 told me to investigate the case sometime in August or September.

22 Q When you were assigned to the Brooklyn Organized  
23 Crime Task Force, did you accept direction from Mr. Dillon,  
24 at that time and other Special Assistant United States  
25 Attorneys assigned under Mr. Dillon?



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A I did.

Q Were you aware that Mr. Bianco was the subject of any investigations by that office prior to June, 1971?

A Yes, I was aware that they were investigating him.

Q What were you aware of?

A Well, you see, when -- just that he was in organized crime and they were probably looking into his tax returns.

Q You knew that?

A Yes -- I mean, I speculated that.

Q That the Brooklyn Organized Crime Task Force was looking into his tax returns prior to the time that you were assigned this case?

A Yes.

Q How did you know that?

A Well, very simple. When the last case was closed in our office, you see, simply because we close a case without a recommendation of prosecution does not mean we forget about the taxpayer.

We have what we call an in-service file and Mr. Bianco's name is put there so they can review his tax returns year after year if they want to.

Q In addition to that, did you know they were investigating him?

1  
2 A I had no know. they were investigating him  
3 before I got into the case.

4 Q Were you working under Mr. Druker's direction at  
5 that time?

6 A Yes.

7 Q When did you begin working under Mr. Druker's  
8 direction?

9 A When I was assigned to the case, approximately in  
10 September of 1971.

11 Q And at that time you had absolutely no information  
12 about Mr. Bianco other than these two exhibits -- am I correct--

13 A No --

14 (continuing) Plus the Revenue Agents conversation  
15 that he had with you --

16 A No --

17 Q (continuing) Plus the old file?

18 A Right.

19 Q Did you work closely under Mr. Druker's direction?

20 A Closely? No.

21 Q Did you follow Mr. Druker's direction?

22 A We had discussions about the case.

23 Q If he asked you to do something on the case did you  
24 do it?

25 A No. He didn't direct the investigation. I ran



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the investigation. He merely discussed with me, "How's it going? Are you having problems?"

Q Did he make any suggestions?

A Any suggestions? Not that I can recall.

Q Did he ever talk to you about sources of income?

A We probably discussed sources of income, yes.

Q Tell us what was said.

A Well, that was one of our problems in the case with respect to sources of income. I had no knowledge where he was earning his money from.

Q Did Mr. Druker discuss with you what he thought his sources of income were?

A I don't recall that he discussed that with me.

Q Are you telling us that you and Mr. Druker had conversations about sources of income and never had any conversations about either of the federal Grand Jury proceedings that Mr. Bianco was brought into this building and testified with respect to his sources of income?

A Absolutely correct. He never discussed with me any Grand Jury testimony by Mr. Bianco.

Q And he never told you what he thought of Mr. Bianco's sources of income which he learned at the Grand Jury when he asked questions?

A No. He never told me.

Q And at that time were working under his direction and control?

A That's right.

THE CLERK: Two documents marked for identification as defendant's exhibits C and D.

(So marked)

Q Did you see him on a weekly basis at that time?

A No.

Q How often would you see him?

A Perhaps every three months.

Q Do you have any notes in your diary as to when you met him?

A Yes, I would have some notes in my diary.

Q Notes as to what was said between the two of you?

A No.

Q Internal memoranda from him to you or you to he?

A No, I do not.

Q What did you determine Mr. Bianco's source of income to be in this case?

A Number one, Mr. Bianco filed an application for a loan for an automobile and on that application Mr. Bianco admitted that he is in the floor waxing business.

Q Is that the end of your answer?

A And that was one of the sources of Mr. Bianco's



1  
2 income.

3 Q Tell the Court when he filed that application.

4 A I believe it was in 1967, approximately.

5 Q Now that you have read the Grand Jury minutes in  
6 this case do you happen to note that there is reference to  
7 that bank loan and reference to the fact that he was a floor  
8 waxer -- in the Grand Jury proceedings?

9 A I do not recall that the Grand Jury proceedings  
10 mention his being a floor waxer.

11 Q Do you recall it?

12 A No, I do not recall it.

13 Q Yet, you read them?

14 A I read the Grand Jury minutes and he said he earned  
15 his money from horse racing.

16 Q You read nothing about an application for a bank?

17 A No, I don't recall that. I read them but I don't  
18 recall that.

19 Q Did you read the state Grand Jury proceedings?

20 A No.

21 Q You have never been shown those?

22 A No I have not.

23 Q What other sources of income did you determine?

24 A We determined that he was a loan shark.

25 Q What else?

1  
2 A That's it.

3 Q Did you determine or is there any portion of your  
4 report that was filed with the Internal Revenue Service where  
5 you conclude that Mr. Bianco earned money from gambling,  
6 horse playing or any such thing as that?

7 A No sir.

8 Q Is there anything in your report that refers to  
9 horse playing, loan sharking or gambling?

10 A Not as a source of income.

11 Q Is there any reference to it at all --

12 THE COURT: Wait a minute, wait a minute.

13 That last question included loan sharking.

14 THE WITNESS: Yes. That was mentioned in my  
15 report -- loan sharking and the floor waxing business.

16 Q Did you misunderstand my question?

17 A Yes.

18 Q So, you had loan sharking and floor waxing?

19 A Yes.

20 Q Is there any reference in your report to gambling,  
21 gambling on horses, horse racing or gambling with respect to  
22 anything in your report?

23 A There might be in my report only as the initiating  
24 allegation made.

25 In other words, when the case went to Intelligence



1  
2 from Audit. Smith might have said that he was a gambler but I  
3 never found that so there's nothing in the report.

4 Q Look at your report and tell us what Smith told you.

5 A I have no reference to what Smith said.

6 Q Look at your report and tell us what reference you  
7 made to gambling and horse racing?

8 A It's not in my report.

9 Q Didn't you just say a moment ago that it might be  
10 in your report with respect to it being the initiator --

11 A Yes, I said it may be a possibility so let me get  
12 my report.

13 (pause)

14 A (continuing) In my report there is some reference  
15 and this is not -- no -- this is merely in connection with his  
16 criminal record secured from the police department.

17 It appears that he has some gambling arrests and  
18 also that he was a fence for stolen property.

19 I got loan sharking, gambling and a fence for stolen  
20 property -- it's in my report but it's not my investigation --  
21 I got it from the criminal record and I make reference to  
22 gambling, yes.

23 Q Is there anything else in your report other than  
24 what you just read to us with respect to gambling?

25 A No sir.

1  
2 Q Playing of horses.  
3 A No.  
4 Q Or anything such as that?  
5 A No.  
6 Q Anything in your report about Grand Jury proceed-  
7 ings?

8 A No.

9 Q Not a word of any kind?

10 A Not a word.

11 Q When did you write that report?

12 A On December the 8th, 1972.

13 Q Did you show it to Mr. Druker?

14 A Yes.

15 Q Did you show it to Mr. Druker before you submitted  
16 it to the Chief of Intelligence?

17 A I don't believe so.

18 Q Is there any way you can tell?

19 A Yes. I know I didn't show it to him.

20 Q Did you confer with Mr. Druker about the report  
21 prior to your submission of it to Intelligence?

22 A No, I did not.

23 He asked me when I'm going to complete the inves-  
24 tigation and I told him that I'm writing the report now.

25 Q When was the first time you showed him that report?



1  
2 A He gets a copy of the report after I am through  
3 with the investigation.

4 Q He gets a copy of the report after Justice is  
5 through with it, doesn't he?

6 A No, after it is completed and it is beginning to  
7 get Xeroxed and goes through the various departments of  
8 Internal Revenue Service.

9 Q Is that because it is an Organized Crime Strike  
10 Force case?

11 A Yes.

12 Q Correct me if I'm wrong because it's been a while  
13 since I was with the United States Attorney's office but  
14 would it go to Regional Counsel, the Justice Department --

15 A Yes.

16 Q And you are saying he got a photostat prior to  
17 when it was submitted to the Chief of Intelligence?

18 A No. He got a copy when it was Xeroxed for Regional  
19 Counsel.

20 THE COURT: What is his status-- Mr. Druker's  
21 status?

22 THE WITNESS: He was an Assistant United  
23 States Attorney with the Strike Force.

24 Q Would your diary disclose when you had a discussion  
25 with Mr. Druker for the first time?

1  
2 A Yes. I generally make notes in my diary but on  
3 that I had a meeting, not what we discussed.

4 Q Do you remember the first meeting -- when it  
5 occurred?

6 A I would say August or September, soon after I got  
7 the case.

8 Q And soon after you met with Mr. Druker, am I correct  
9 in assuming that you did not go out and do any investigating  
10 at that time?

11 A You mean leave his office and go out?

12 Q No. I'm asking, did you physically investigate  
13 prior to meeting Mr. Druker?

14 A Oh, yes, I may have. I probably sent a memorandum  
15 to our Service Center to determine whether Mr. Bianco had  
16 filed returns for those years.

17 Q That was to verify but you knew before you met  
18 Mr. Druker that he had not filed -- you knew that from Mr.  
19 Smith when he was working for Mr. Druker?

20 A You have a double question. I don't know if he  
21 was working for Mr. Druker.

22 Q Was he working for Mr. Druker?

23 A I don't know.

24 Q You have no idea?

25 A I have no idea whether Mr. Druker ever spoke with



1  
2 Mr. Smith.

3 Q Did Mr. Smith remain as Revenue agent on this case?

4 A Yes, for several months and then another agent.

5 Q Did you ever have meetings, you, Smith and Mr.  
6 Druker?

7 A I don't recall any -- together?

8 Q Yes, the three of you.

9 A No. I don't recall any.

10 Q Did Mr. Smith ever come to you and tell you what  
11 Mr. Druker wanted in this particular matter?

12 A I don't recall that.

13 Q Was this the only case that you and Mr. Smith were  
14 working on together at that time?

15 A Yes.

16 Q Are you privy to any of the memorandum that are  
17 not Internal Revenue agent memorandum of the Organized Crime  
18 Task Force?

19 A Yes, I am.

20 Q Did you see any memorandum from any organization  
21 with respect to Nick Bianco?

22 A Yes. I looked at the F.B.I. file.

23 Q When did you see the F.B.I. file?

24 A Oh, sometime during the investigation.

25 Q Whose file was it?

1                   It's in the Strike Force.

2                   Which F.B.I. agent?

3                   I don't know who the agent is.

4                   I just look at the file to see whether it would  
5 help me in securing any evidence.

6                   MR. LA ROSSA: Your Honor, so we don't  
7 waste an awful lot of time, may I suggest -- I  
8 don't believe I have the right to look through  
9 that file but I certainly think your Honor has  
10 an absolute right to do so and I also think the  
11 same thing applies to the F.B.I. reports on Mr.  
12 Bianco at the time the witness admitted that he  
13 read them.

14                   It seems to me at this point, if we are not  
15 going to run in circles, if your Honor would examine  
16 these cameras and make a determination as to whether  
17 or not there is anything in any of the reports that  
18 goes to the issue that we have raised here in court  
19 and whether or not we should be privy to the report  
20 or it should be pointed out to the witness or whatever  
21 your Honor decides is the most important thing, that  
22 would expedite matters considerably because otherwise  
23 I have to call the F.B.I. agent and then call Mr. Smith  
24 and attempt to get each of these pieces together and  
25



Nahmias.

1  
2 I think it would cut out the tile if you could  
3 examine them in camera.

4 THE COURT: I will do it but I don't know  
5 how it is going to serve your purpose.

6 MR. LA ROSSA: I'd rather examine them myself --

7 THE COURT: I know that.

8 My point is, you will probably have to call the  
9 S.I. agent anyway.

10 MR. LA ROSSA: Yes, but I think you will see  
11 some Brady material in the file.

12 It is our contention that -- in 1971 the  
13 Supreme Court decided U.S. v. Gillio and in effect,  
14 what they did was create the inescapable inference  
15 that there is one Government and the Government is  
16 responsible for its acts and not the individual's  
17 acts. You don't go to the individual to determine  
18 his knowledge. You determine the knowledge of the  
19 Governmental agency handling the prosecution and that  
20 case arose out of this district where one assistant  
21 United States Attorney, not privy to the information  
22 another assistant United States Attorney had, did not  
23 disclose information available during a trial and  
24 Chief Justice Berger and the Court held unanimously --

25 THE COURT: I think we are off the beam slightly.

1  
2 It is your contention that the Government  
3 got from Mr. Bianco's either state or federal  
4 government -- got certain admissions from him in  
5 Grand Jury testimony which you say led to this  
6 indictment.

7 Now, what is in the F.B.I. report or the  
8 Internal Revenue Service agent's report, unless  
9 there is some reference to the Grand Jury minutes  
10 in one or the other or both of them, I do not see  
11 the connection.

12 This witness has testified that there is no  
13 reference --

14 MR. LA ROSSA: The individual who conducted  
15 the investigation is James Druker. He made the  
16 initial inquiries in the Grand Jury and this witness  
17 admitted that Mr. Druker handled some portion as to  
18 the direction of the investigation; that he conferred  
19 on the investigation with Mr. Druker and then Mr. Druker  
20 presented it, ultimately, to the Grand Jury that led  
21 to the indictment of Mr. Bianco. So, we are not far  
22 afield. We are talking about the same office, the  
23 Organized Crime Task Force.

24 THE COURT: Did Mr. Druker obtain this par-  
25 ticular indictment?



1  
2 MR. LA ROSSA: I don't know the answer to that.

3 MR. MCCARTHEY: This is a failure to file case.

4 Mr. Druker did not handle that procedure. It was  
5 an information and it was filed after Mr. Druker  
6 had left the office. I think he was out of the office  
7 a year or two.

8 There were no Grand Jury proceedings necessary  
9 in order to obtain the information charging --

10 THE COURT: Yes, you are right. I forgot this  
11 was an information.

12 Mr. La Rossa, assuming that everything this  
13 witness testified to so far is true -- that this  
14 investigation was an on-going investigation from a  
15 1964, '65 and '66 investigation and assuming there is  
16 no other initiating act and assuming Mr. Druker never  
17 said this man admitted in his state or Federal Grand  
18 Jury testimony that he never filed returns but assuming  
19 also that he knew that fact because it was verified,  
20 I don't know the basis for your motion.

21 MR. LA ROSSA: I'm suggesting that the Organized  
22 Crime Task Force is the originator of this and that  
23 the witness was part of it at that time and that the  
24 initiation of a report comes after Mr. Bianco was  
25 brought before the Grand Jury.

Has your Honor seen the Grand Jury minutes?

THE COURT: I don't believe so -- yes, I did read them.

MR. McCAFFREY: I believe the Federal and State Grand Jury minutes should be made part of the proceedings.

MR. LA ROSSA: I agree.

THE COURT: Yes, I read them but I don't think I read them recently.

MR. LA ROSSA: I think they were handed up to your Honor some time ago. That is my recollection.

THE COURT: I remember reading about his failure to file returns.

MR. LA ROSSA: I think I can sustain my position, given the opportunity and I think we should produce the records and your Honor should determine whether they should be given to me or any portion and I would appreciate your Honor directing the witness to get his diary and the Revenue report brought in.

MR. McCAFFREY: There was no Revenue report.

MR. LA ROSSA: Oh, I'm sorry.

THE COURT: There was a prior Revenue report.

MR. LA ROSSA: And a prior Intelligence report.

THE COURT: Is that correct?

THE WITNESS: Yes, there was.



1  
2 THE COURT: I will look at that too.

3 MR. LA ROSSA: I think we will be able to  
4 cut some of the wheat from the chaff.

5 THE COURT: When did he appear?

6 MR. McCAFFREY: In December 1969 and January  
7 1970 and when you have a chance to look at the minutes  
8 again, you will find that most of the inquiry was  
9 about whether or not he was active in organizing  
10 junkets to Las Vegas.

11 THE COURT: He was before the Grand Jury  
12 before 1971?

13 MR. McCAFFREY: Yes.

14 THE COURT: So, it is your contention, since  
15 Druker was in charge of this investigation and since  
16 he was the superior --

17 MR. McCAFFREY: I don't think that's true.

18 THE COURT: I'm trying to follow his reasoning.

19 MR. LA ROSSA: Mr. McCaffrey didn't say that  
20 these minutes ask him about sources of income and  
21 it is all the same depository as far as the Govern-  
22 mental agencies are concerned.

23 MR. McCAFFREY: I don't think Mr. Nahmias worked  
24 directly under Mr. Druker.

25 THE WITNESS: May I clarify?

1  
2 THE COURT: Yes.

3 THE WITNESS: Mr. La Rossa has given your  
4 Honor the impression that I worked directly under  
5 Mr. Druker.

6 THE COURT: Who were you working with?

7 THE WITNESS: Mr. Druker was the assistant  
8 United States Attorney but he didnt direct my inves-  
9 tigation. He is an assistant United States Attorney  
10 upstairs. I conducted the investigation the way I  
11 thought it should be done.

12 THE COURT: It is Mr. La Rossa's contention  
13 that if Mr. Druker said to you or Smith or anyone  
14 inthe Internal Revenue Service you had the authority  
15 to start the wheels moving that this fellow doesn't  
16 file returns, get someone on it -- it is his contention  
17 that this kind of a statement lies somewhere in the  
18 background of 1970 or 1971 in which case he might  
19 have a point.

20 He is asking me to look through your report,  
21 the F.B.I. report and the two prior reports to see  
22 if there's substance to that.

23 MR. McCAFFREY: There was no question in the  
24 federal Grand Jury proceedings as to whether or not  
25 Mr. Bianco had filed federal tax returns or any



1  
2 returns at all.

3 Most of the questioning was about whether or  
4 not he organized junkets out to Vegas and one question  
5 toward the end of the proceedings, when Bianco denied  
6 the earning of income from junkets to Las Vegas, Mr.  
7 Druker then asked him "What is the source of your  
8 livelihood and how do you support your family" and  
9 he said "I support them by playing the horses."

10 MR. LA ROSSA: Your Honor, you have to read  
11 it.

12 He didn't want to answer the questions along  
13 that line of inquiry. He was forced to.

14 THE COURT: I will read it.

15 MR. LA ROSSA: I think you have got to look  
16 at the state Grand Jury minutes and we have to get  
17 those witnesses before the Court because in one of  
18 the Grand Jury proceedings the whole inquiry is about  
19 income tax.

20 MR. McCAFFREY: There was one question --  
21 "Have you filed federal income tax returns" and  
22 when you read it in context you will find it is  
23 really out of context. It bears no relationship  
24 to the rest of the inquiry directed to the witness.

25 Most of the inquiry at the state Grand Jury

proceedings was directed to whether or not he knew certain other individuals believed to be active in organized crime --

MR. LA ROSSA: I hate to dispute Mr. McCaffrey but they talk about the source of income and did he file these particular sources of income he described -- Judge, you have to read them.

THE COURT: But it still doesn't solve our problem about these additional witnesses you will examine. I assume you will want to examine Mr. Smith and possibly Mr. Druker?

MR. LA ROSSA: I think I need Mr. Smith and the originator of the F.B.I. report if there's such a thing.

THE WITNESS: There is a folder.

MR. LA ROSSA: Apparently the witness is talking about the F.B.I. folder.

THE COURT: Is there more than one report?

THE WITNESS: It is a folder.

THE COURT: Do you have several reports?

THE WITNESS: Well, I don't know.

THE COURT: Would there be several individuals named in the reports?

THE WITNESS: No, just specifically as to



1  
2 Mr. Bianco.

3 THE COURT: Is there more than one report?

4 THE WITNESS: Yes, I would think so.

5 MR. LA ROSSA: Would your Honor read the folder?

6 THE COURT: I'll take a look at it.

7 Are you finished with the witness?

8 MR. LA ROSSA: Well, I don't to chop this  
9 up and once I see I'm not getting any further infor-  
10 mation with respect to the files I would make demand  
11 for Mr. Smith as a witness.

12 THE COURT: How soon can you get this information  
13 to me and do you want to give me the original or do  
14 you want to photostat that (indicating)?

15 THE WITNESS: I don't see any reason to  
16 photostat it. I see no harm in giving this to you  
17 like this. Photostat all this? I can give your Honor  
18 the original and the rest in a couple of days.

19 THE COURT: The F.B.I. reports you have.

20 MR. McCAFFREY: Yes, there is no problem dupli-  
21 cating it and we'll have it for you tomorrow.

22 THE COURT: Why not mark it now?

23 MR. McCAFFREY: I would request the Internal  
24 Revenue Service file about which Mr. Nahmais testified  
25 be marked as Government's exhibit 1 for identification.

1  
2 THE CLERK: Government exhibit 1 for identifica-  
3 tion.

4 (So marked.)

5 THE COURT: Let's see if you can't get all this  
6 material to me by Monday, including your diary and  
7 other documents.

8 Do you want to suspend now?

9 MR. LA ROSSA: I think it makes sense and I  
10 expect to be working in this building for the next  
11 three or four weeks before various judges and I think  
12 the hearing will be broken up to some extent but I  
13 will try to fit it in at your pleasure.

14 THE COURT: I'd like to schedule a hearing for  
15 Friday afternoon, October 11 at two p.m. Friday  
16 afternoon is about the only time I can be reasonably  
17 sure of not giving a jury going.

18 MR. McCAFFREY: Just one point I'd like to  
19 make before we close and that is the fact -- and  
20 you will see it in the federal Grand Jury proceedings --  
21 there is nothing there about Mr. Bianco's not filing  
22 returns so Mr. Druker couldn't have told Mr. Nahmias  
23 that because there's no information to that effect.

24 MR. LA ROSSA: Our position on this is that  
25 about eight months before, before he is brought to the



1  
2 federal Grand Jury an assistant District Attorney in  
3 Kings County asks all the questions with respect to  
4 filing and sources of income and it is our contention  
5 -- and I know we must prove it -- that this information  
6 was readily available: that F.B.I. agents were present  
7 at the Grand Jury and reports made to Mr. Druker and  
8 the information shared.

9 THE COURT: What about the F.B.I. reports now?

10 MR. McCAFFREY: I will furnish them to your  
11 Honor this afternoon.

12 THE COURT: We will adjourn until October 11  
13 at two p.m.

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1 THE CLERK: The United States against  
2 Nicholas L. Bianco.

3 Mr. McCAFFREY: I believe Mr. Nahmias was on  
4 the stand when we concluded the last hearing.

5 THE COURT: Mr. LaRossa, at the last session  
6 of this hearing, you asked the Court to make an in  
7 camera inspection of a number of Government records,  
8 which is done. A memorandum is prepared, and a  
9 copy was given both to you and Mr. McCaffery, I think,  
10 summarizing what appeared from those records which  
11 might be of some pertinence.

12 MR. LA ROSSA: Yes, sir, the memorandum sub-  
13 mitted to me by your chambers, is that something that  
14 was prepared by your Honor?

15 THE COURT: Prepared by one of my law clerks,  
16 under my supervision.

17 MR. LA ROSSA: As a summary of the papers?

18 THE COURT: Yes. I went through the papers --

19 MR. LA ROSSA: I assumed there was a memoran-  
20 dum that was within the Government's file.

21 THE COURT: No, it was not. This was a memo-  
22 randum. I went through the papers and I gave the  
23 papers to my law clerk, Mr. Thayre, and he went  
24 through them in addition, and made these entries,  
25 which I think are essentially correct, based on my  
recollection, based on his analysis.



1 MR. LA ROSSA: I wasn't questioning your  
2 authenticity, I was questioning --

3 THE COURT: Mr. McCaffrey had nothing to do  
4 with it other than that Mr. Thayre said he was going  
5 to submit a copy in the first instance to Mr. Mc-  
6 Caffrey to see if he felt there was anything in  
7 there that was in any way privileged. Mr. McCaffrey  
8 said no, and the document as originally prepared  
9 was submitted to you with no changes or deletions.

10 MR. LA ROSSA: In fact, Mr. Thayre called me  
11 before it was submitted to Mr. McCaffrey and I agreed  
12 that procedure should be used.

13 THE COURT: Do you want to mark a copy?

14 MR. LA ROSSA: That might be the most appro-  
15 priate thing to do.

16 THE COURT: We'll mark the original.

17 If there are any errors in there, I'll take  
18 full responsibility for it, but I hope not.

19 THE CLERK: Court's Exhibit No. 1, one docu-  
20 ment.

21 (So marked)

22 THE COURT: Do you wish to proceed?

23 MR. LA ROSSA: Yes, sir.

24 THE COURT: Who do you wish to have on the  
25 witness stand?

1 MR. LA ROSSA: I was in the process of examin-  
2 ing Mr. Nahmias.

3 THE COURT: Do you want him to be recalled?

4 MR. LA ROSSA: Yes.

5 THE COURT: Mr. Nahmias, take the witness  
6 stand. You're still under oath.

7  
8 LOUIS NAHMIAS, having been previously duly  
9 sworn, resumed the stand and testified further as  
10 follows:

11 CROSS EXAMINATION (CONTINUED)

12 BY MR. LA ROSSA:

13 Q Mr. Nahmias, I think the last time we were  
14 together you told us that you had picked up this investiga-  
15 tion from another special agent who had initiated an investi-  
16 gation with respect to Mr. Bianco.

17 A Yes, I did.

18 Q This was sometime shortly after he jacketed a  
19 file with respect to Mr. Bianco; is that right?

20 A What do you mean, "jacketed a file"?

21 Q Opened a file on Mr. Bianco for the investiga-  
22 tion of this year.

23 A Well, we put our papers into a folder. Is  
24 that what you mean?

25 Q Let me rephrase it.



1  
2 The other gentleman's name was Silverman,  
3 was it not?

4 A Yes.

5 Q Was there sometime shortly after Mr. Silverman  
6 began the investigation of Mr. Bianco that you replaced him?

7 A Mr. Silverman got the investigation in June  
8 of '71, and I came into the picture in mid-September of '71.

9 Q Mr. Nahmias, have you had an opportunity at any  
10 time from the time we last appeared until now to examine the  
11 Internal Revenue reports with respect to Mr. Bianco?

12 A Yes.

13 Q Have you also had an opportunity, Mr. Nahmias,  
14 to examine your diary entries with respect to Mr. Bianco?

15 A Yes.

16 Q Have you determined, after examining those two  
17 reports, there were numerous meetings between you and other  
18 federal agents prior to Mr. Bianco's indictment or informa-  
19 tion being filed?

20 A Yes, there were meetings.

21 Q For example, sir, on April the 19th, 1972,  
22 did you prepare a request to the FBI to determine their  
23 reports with respect to Mr. Bianco?

24 A Yes, I did.

25 Q Will you tell me if that was in the form of a

letter?

A I think it's in a form -- a form letter, yes.

Q Do you have a copy of that letter with you?

A It's probably in the file. It's just a form letter as to whether they had a record.

Q Can you tell me what the letter asked for?

A The letter asked if there is any record on file for a Mr. Nicholas Bianco.

Q When you say "record," are you talking about prior arrests or convictions?

A Whatever they have.

Q Can you tell me what you received from the FBI in response to that?

A Well, I was told there was a file up in the Strike Force with respect to Mr. Bianco.

Q Did you have an opportunity to examine that file?

A Yes, I did.

Q Am I correct that this file is voluminous?

A It's voluminous. It's a file about that size (indicating). I mean, it may have --

THE COURT: About an inch thick?

THE WITNESS: Yes.

Q Did you read that file?



1  
2 A Yes.

3 Q Did that file in any way refer to Mr. Bianco  
4 being subpoenaed by a Kings County grand jury?

5 A I do not recall anything like that, no.

6 MR. LA ROSSA: May I assume your Honor also  
7 reviewed that particular file and there was no  
8 reference to any grand jury papers?

9 THE COURT: I reviewed it, but you're testing  
10 my recollection a little bit beyond its capacity.  
11 I have no specific recollection of any reference to  
12 a grand jury appearance before Kings County in that  
13 file.

14 MR. LA ROSSA: Maybe Mr. McCaffrey can  
15 assist us.

16 THE COURT: Can you assist us, Mr. McCaffrey?

17 MR. McCAFFREY: Your Honor, the file is  
18 fairly bulky. I think there may have been some  
19 reference to the fact that Bianco and/or Hoods  
20 were subpoenaed to appear before a Kings County  
21 grand jury. I believe there is such a reference.  
22 I believe that is the extent of it. The substance  
23 of testimony or anything of that nature is not  
24 exposed.

25 THE COURT: I thought we quoted a portion of

1  
2 that file in here, but maybe not. May I have that  
3 back and I'll read that portion to you.

4 MR. LA ROSSA: May it please the Court,  
5 I specifically submit it's a critical aspect of the  
6 defendant's motion before the court.

7 THE COURT: I understand. I'm not denying  
8 that. Might I have that portion?

9 MR. MCCAFFREY: I'll send somebody up to the  
10 office to get it, your Honor.

11 (Pause)

12 THE COURT: I'll take a look at it, but I  
13 have no specific recollection of it.

14 MR. LA ROSSA: I understand it. Maybe I can  
15 continue and come back to that.

16 THE COURT: Yes, you may.

17 MR. LA ROSSA: So we don't waste any time.

18 Q Mr. Nahmias, am I correct in stating that you  
19 were actually part of the Organized Crime Task Force of  
20 this particular -- assigned to this particular Organized  
21 Crime Task Force during the period of time that you were  
22 handling the Bianco case?

23 A I was assigned to the Strike Force group of the  
24 Internal Revenue Service.

25 Q Who was the chief of the Strike Force group



1  
2 in the Internal Revenue Service?

3 A My supervisor at that time was Mr. Delfino.  
4 Then there was a Mr. Hart.

5 Q Did Mr. Delfino work under the supervision of  
6 Mr. Denis Dillon at that time?

7 A No, he did not.

8 Q Did he work in conjunction with Mr. Denis  
9 Dillon?

10 A No, he did not.

11 Q The Internal Revenue Service reports, were  
12 they open to Mr. Dillon -- I'm talking about the reports  
13 being handled within the Strike Force.

14 A Those cases where we got clearance -- we have  
15 disclosure problems, but those cases where it affected the  
16 Strike Force, of Mr. Dillon's office, they could -- they  
17 would get together, I assume -- at least I know there were  
18 meetings. What went on, I don't know.

19 Q Is this one of the cases that clearance was  
20 granted on?

21 A Yes.

22 Q For all intents and purposes, your work on  
23 Bianco could be reviewed by Mr. Dillon as well as Mr. Delfino,  
24 your other supervisor?

25 A Yes.

2 Q As a matter of fact, it was so reviewed, was  
3 it not?

4 A Yes.

5 Q Was there anything else that was shown to you  
6 outside of the Internal Revenue Service reports other than  
7 the FBI reports?

8 A No.

9 Q On April 19, 1972, when you made that request  
10 to the FBI for a check of Mr. Bianco, who did you make that  
11 request to?

12 A Just a general request.

13 Q Was it made to John Malone?

14 A I don't recall. It's a form letter which we  
15 sent to the FBI.

16 Q Did you send it to the FBI, or did you send  
17 it to Mr. Dillon or whoever was in charge of the Task Force?

18 A It's a form letter which goes to the FBI.

19 Q However, the reports that you saw were within  
20 the office of Mr. Dillon?

21 A Yes.

22 Q That's the very same place that you kind of  
23 hung your hat at that time; isn't that right?

24 A That's where I looked at the reports, yes.

25 Q Isn't that where you worked from, too?



1  
2 A No, I did not.

3 Q On August the 25th, 1972, sir, did you prepare  
4 a memorandum with respect to a conference that you had with  
5 Mr. Dillon?

6 A Yes.

7 Q Will you tell us whether that conference --  
8 if there was any discussion about grand jury appearances?

9 A There was no discussion about grand jury  
10 appearances.

11 Q Do you have that memorandum?

12 A I did not prepare a memorandum.

13 Q When I say "a memorandum," you might call it a  
14 status report or report of some sort.

15 A Oh, yes.

16 Q You see, I'm at a disadvantage. The memorandum  
17 that's in front of me refers as a status report --

18 A I want to understand the document you're refer-  
19 ring to. Mr. Dillon requested a status report on this case  
20 as to how far I had gotten, what are we doing with it,  
21 and I did write back and told him what the status of the case  
22 was, yes. That is a memorandum.

23 Q That was in August of 1972?

24 A August of '72, yes.

25 Q Did you also write a report to the chief of

1  
2 Intelligence stating that you had a conference with Mr.  
3 Dillon prior to the time you gave him the status report?

4 A I didn't have a conference with Mr. Dillon  
5 prior to that status report. He sent down a request and  
6 I sent --

7 Q A written request?

8 A Yes, it was a written request, and I sent him  
9 a written reply.

10 Q There came a time, sir, in the prior investi-  
11 gation when one of your fellow agents closed that file, isn't  
12 that right, saying there was no criminal potential within  
13 the file?

14 A Yes.

15 Q One of the reasons that was given in that prior  
16 statement was a failure to show source of income, am I  
17 correct?

18 A No, that is not true.

19 Q Could you tell us what the reason was for  
20 closing that?

21 A Yes, there was insufficient expenditures in  
22 order to determine the gross income of the taxpayer in order  
23 for us to recommend prosecution.

24 Q Can you tell us what kind of dollars was  
25 involved?



1  
2 A Very small. I would say something like  
3 \$4,000 or \$5,000 a year, and it was rather small.

4 Q What kind of expenditures are we talking about  
5 for the year in question?

6 THE COURT: For the years in question.

7 MR. LA ROSSA: For the years. I'm sorry.

8 THE WITNESS: It's much more than that.

9 Q Can you tell me what you recall it to be?

10 MR. MC CAFFREY: Objection, your Honor.

11 THE COURT: I think I'll sustain that  
12 objection. That has nothing to do with what we're  
13 doing here. You can't go under the pretrial dis-  
14 covery --

15 MR. LA ROSSA: I'm not trying to. I'm showing  
16 the numbers in the present years aren't different  
17 than in the other year --

18 THE COURT: That's not a question for  
19 tainting.

20 MR. LA ROSSA: Might I make an offer of proof?

21 THE COURT: Yes.

22 MR. LA ROSSA: It is my contention, may it  
23 please the Court, the only distinction between '68  
24 and '69, the years in which the Government failed  
25 to prosecute on a failure to file and the years in

1  
2 which they filed an information was source of income  
3 and not the dollars that are involved.

4 This has been so protracted --

5 THE COURT: Based on my examination of the  
6 file, Mr. LaRossa, I don't think that's true.  
7 I think what Mr. Nahmias says is essentially true.  
8 My recollection of the figures, it's been a while  
9 since I looked at them, they're more substantial  
10 in these years in question.

11 MR. LA ROSSA: I'll accept that.

12 Q Was there source of income on the prior years?

13 A Yes, there was some mention of a source of  
14 income on the prior years, yes, sir.

15 Q I'm talking about the years in which you did  
16 not go forward.

17 A Yes.

18 Q In your present file did you ever use as a  
19 source of income gambling income?

20 A No, I did not.

21 Q Is it mentioned in any way, in any of your  
22 files?

23 A Gambling income?

24 Q Source is from gambling, gambling income,  
25 horse playing.



1  
2 A No, it is not --

3 THE COURT: Wait a minute. The term  
4 "gambling" is not mentioned --

5 THE WITNESS: Yes, the term "gambling" is  
6 mentioned in my report which I got from the criminal  
7 record which indicated that he was arrested for --  
8 the taxpayer was arrested for gambling, but that's  
9 all. It is not a part of my criminal case as a  
10 source of income that he earned his money from  
11 gambling. It is not.

12 THE COURT: I should add, too, when I made  
13 the comment about the figures being more substantial,  
14 of course I don't know if they're substantiateable,  
15 those figures.

16 MR. LA ROSSA: You're referring to the  
17 numbers --

18 THE COURT: The actual numbers.

19 MR. LA ROSSA: I understand that.

20 THE COURT: I can't vouch for it.

21 MR. LA ROSSA: I understand what you meant,  
22 your Honor.

23 Q Was there anything within the FBI report that  
24 you were given the opportunity to read that indicated that  
25 a source of income of Mr. Bianco was gambling, card playing,

1  
2 horse playing or in any way proscribed his income to gamb-  
3 ling?

4 A Well, I recall reading either in the newspaper  
5 or in the FBI report or the New York City Police Department  
6 criminal record gambling was mentioned.

7 Q I'm not talking about an arrest now; I'm  
8 talking about as a source of income.

9 A Well, gambling was mentioned.

10 Q Can you tell me when that report was dated  
11 in which you saw that gambling was mentioned as a source of  
12 income?

13 A The criminal record which I referred to. That  
14 was the documentation, was probably dated in 1971 or '72,  
15 during my investigation.

16 Q Are you talking about a print sheet now?

17 A Yes, a print sheet.

18 Q I'm not talking about that. Exclude that.  
19 I'm not talking about arrests now. Did you read anything  
20 in the FBI report which stated that the writers believed or  
21 the writers had information to believe that Mr. Bianco  
22 earned his living from gambling, card playing, horse playing  
23 or any other terms that one would refer to as a gambler?

24 A Specifically, I do not recall, but I do recall  
25 that one of his occupations was gambler. I shouldn't use



1  
2 "occupation," but that he was a gambler.

3 THE COURT: Pursuits.

4 THE WITNESS: Pursuits was gambling, yes.

5 Q Can you tell me when that was stated?

6 A Well, I obviously read it sometime between  
7 September of '71 through December of '72 when I was finished  
8 with the investigation. Now, I don't recall whether that  
9 was mentioned about him in the prior years or during my  
10 years. I don't recall.

11 MR. LA ROSSA: Can Mr. McCaffrey help us  
12 with that?

13 THE COURT: My recollection is that it's all  
14 the way through the file in reference to his --  
15 this man is a gambler, my recollection. It's just  
16 a vague recollection.

17 MR. MC CAFFERY: I have no recollection of it  
18 being reported as being a source of income, in the  
19 sense of being an occupation.

20 THE COURT: That he was a gambler.

21 MR. MC CAFFERY: Gambler, yes.

22 MR. LA ROSSA: He stated he was a gambler,  
23 that he made statements that he was a gambler.

24 THE COURT: I don't remember that. I'm very  
25 much like Mr. Nahmias, newspaper clippings.

1  
2 MR. LA ROSSA: Again this becomes very  
3 crucial --

4 THE COURT: You want to know if it's in the  
5 FBI report.

6 MR. LA ROSSA: Again, my contention is that  
7 that's the first time --

8 THE COURT: We'll take a look.

9 MR. LA ROSSA: That the witness admitted  
10 a source of income before the Kings County grand jury.

11 THE COURT: It's not just a question of ad-  
12 mission. My recollection of going through that  
13 entire file it was all over the place.

14 MR. LA ROSSA: I understand that, sir, but  
15 if one of the writers of a particular report stated  
16 that the witness had admitted that he was a gambler  
17 or received income as a source of gambling and that  
18 date has any relationship to the grand jury appear-  
19 ance, I would then ask for the production of that  
20 writer.

21 THE COURT: Let's take a look at it.

22 MR. MC CAFFERY: I don't think there's  
23 anything of that nature, your Honor.

24 (A file is handed to the Court.)

25 THE COURT: I didn't realize you would attack



1  
2 my memory quite this way, Mr. LaRossa, or I would  
3 have done my homework ahead of time.

4 MR. LA ROSSA: Do you want me to continue?

5 THE COURT: Yes, go ahead. I'll continue  
6 looking through the file.

7 Q Did there, sir, on October 12th, 1970, was  
8 there a hearing or conference which included the Assistant  
9 Strike Director, Chief of Intelligence, Mr. Dillon, Mr.  
10 Drucker, and you with respect to this case?

11 A No, I was not in that conference. There was  
12 a conference, but I was not a party to it.

13 Q Can you tell us who from the Internal Revenue  
14 Service was present at that time?

15 A I assume it was the Chief of Intelligence.

16 Q Have you ever seen a memorandum of --

17 A No, I do not know what went on at the  
18 conference.

19 Q You never heard from anyone what went on?

20 A No, except -- I haven't heard as to what the  
21 conference was about. I had an idea what the conference  
22 was about.

23 Q What did you believe the conference to be  
24 about?

25 A I think it was rather -- Mr. Dillon wanted

1  
2 to know the status of the case and wanted to move it faster.  
3 That may have been the reason for the conference, you see.

4 Q So you have no idea what was discussed?

5 A I don't know what was.

6 Q Do you know whether a memorandum was prepared  
7 of that conference?

8 A I don't know of any. I haven't seen any.

9 Q MR. LA ROSSA: Mr. McCaffrey, can you tell  
10 us if a memorandum was prepared of that conference?

11 MR. MC CAFFREY: I'm unaware of it.

12 Mr. Nahmias, on September 21, 1971, you had a  
13 conference with Mr. Drucker, did you not?

14 A Yes.

15 Q Can you tell us what was discussed?

16 A Well, I got the case, the case was assigned  
17 me sometime around the 16th of September and I had gone  
18 down to Mr. Drucker. We're in the Internal Revenue Building  
19 Mr. Drucker was in the Justice Department Building. The  
20 Courthouse Building.

21 I went down to him and I asked him if he had  
22 any knowledge about the case since I knew that he had the  
23 case.

24 I had learned that from Mr. Silverman that  
25 Drucker had the case and I went down just to talk to him



1  
2 about what this thing was all about.

3 Q Who is Marvin Sontag?

4 A Marvin Sontag's a Strike Force representative  
5 in the Southern District of New York.

6 Q Did you receive a memorandum from him on April  
7 3rd, 1973?

8 A Yes.

9 Q Did that memorandum refer to sources of income  
10 of Mr. Bianco?

11 A No, not sources of income.

12 Q It did not list sources of income?

13 A No, it listed possible expenditures.

14 MR. LA ROSSA: Might I refer your Honor to --

15 THE COURT: I'm looking at it right now.

16 A (Continuing) It may have included one possible  
17 source of income, yes.

18 THE COURT: Let me look on this list a minute.

19 THE WITNESS: Yes.

20 THE COURT: There are a number of items refer-  
21 red to in here of those items, three pages of items,  
22 there only appear to be two that might be, I think  
23 one says a Mike Patonia, former New York City  
24 correction officer, now facing a long term, prison  
25 term, made payment to Bianco in connection with

1  
2 hijacking and loan sharking and narcotics. Then  
3 there are two references to loans made by Mr. Bianco  
4 but no reference to any repayments.

5 MR. LA ROSSA: You're referring now, sir, to  
6 the April 3rd, from Sontag.

7 THE COURT: Yes, I'm afraid that's a mis-  
8 statement, representing list of sources of income.  
9 It represents personal expenditures -- sources of  
10 income.

11 MR. LA ROSSA: Thank you, sir.

12 THE COURT: There are a great number of expendi-  
13 tures listed here. There's one other reference  
14 to a possible income where Mr. Bianco interceded  
15 on behalf of somebody and subsequently received \$5,000  
16 from that person for his help.

17 MR. LA ROSSA: Thank you.

18 Q On February 22, 1972 --

19 THE COURT: Wait.

20 MR. LA ROSSA: I thought you were finished.

21 THE COURT: There's one other item where  
22 Mr. Bianco loaned some money to somebody and when  
23 that person could not continue his payments, Bianco  
24 became a part owner of his business. Those are --  
25 I guess there were two or three sources of income.



MR. LA ROSSA: Thank you, sir.

Q On February 22, 1972, did you have a conference with Mr. Dillon about this case?

A Yes.

Q Did Mr. Drucker appear at that conference?

A Yes.

Q Did Mr. Tallia appear at that conference?

A Yes.

Q That's Ray Tallia, is it not?

A Yes.

Q Mr. Talia is an FBI agent who's actually assigned to the Task Force, is he not?

A I don't know whether he's assigned, but he is an FBI agent.

Q Mr. Delfino?

A Yes, that's my supervisor.

Q And Mr. Ziemba?

A Yes.

Q Is he a special agent of the FBI as well?

A No, he's part of the Internal Revenue Service.

Q I see. At that time was Mr. Bianco discussed?

A Yes.

Q Did Mr. Drucker inform you that he had either put Mr. Bianco at that time before a grand jury or is

1  
2 planning to do so?

3 A No, he did not mention that.

4 THE COURT: Which conference?

5 MR. LA ROSSA: February 22, 1972, sir.

6 THE COURT: Go ahead.

7 A (Continuing) No, he did not.

8 Q Are you telling us up to the filing of that  
9 information, you had no information that Mr. Bianco had ever  
10 been put before a grand jury?

11 A That's right.

12 Q Are you telling us then that all the FBI  
13 reports you read had no mention of Mr. Bianco appearing  
14 before a federal grand jury?

15 A I do not recall reading it. Let's understand  
16 this: that when I looked through the FBI report, I was  
17 looking for one thing. I was looking for possible expendi-  
18 tures on the part of Mr. Bianco. That's what I was looking  
19 for. Whatever was there, if it didn't interest me, I would  
20 pass it by, because it's a rather voluminous file.

21 Q Are you telling us the file had no reference  
22 to his appearing before a grand jury --

23 A Right, I do not recall seeing it.

24 Q You testified previously that you had abso-  
25 lutely no knowledge of it, right?



1  
2 A Right, that's correct.

3 Q Are there any other reports and files that  
4 you were made privy of -- privy to, Mr. Nahmias, prior to  
5 the time the information was filed in this case?

6 A No other files that I can recall.

7 Q On May 1st, 1972, you discussed the case with  
8 Mr. Drucker, did you not?

9 A Yes.

10 Q By the way, did the Strike Force downstairs  
11 have a file on Mr. Bianco?

12 A (No response)

13 Q Notwithstanding your file?

14 A The only file I know of is the FBI file that  
15 they had in the Strike Force.

16 Q Nothing else?

17 A That's all I ever saw.

18 Q Did you in your discussion with Mr. Drucker  
19 on May 1st, 1972 discuss sources of income?

20 A I don't recall it, but we may have. We may  
21 have discussed it.

22 Q Did you prepare a memorandum?

23 A No, I did not.

24 Q Do you know whether Mr. Drucker did?

25 A No, I do not know.

Q Did you discuss Mr. Bianco's testifying before any grand juries?

A No, we did not.

Q On May 22, 1972, did you have a conference with Mr. Drucker?

A Yes.

Q Did you discuss sources of income at that time?

A We may have.

Q You have no recollection?

A I do not recall it.

Q Nor do you have a memorandum?

A I do not.

Q You don't know whether he does as well?

A I do not.

Q You certainly know you didn't discuss grand jury appearances?

A Yes.

Q That's definite?

A Yes.

Q On October 3rd, 1972, you examined the FBI report and had a conference with Mr. Drucker?

A Yes.

Q Did you talk about sources of income at that time?



1  
2 A We may have. I do not reollect.

3 Q Nor did you make a memorandum?

4 A I did not.

5 Q Nor do you know if Mr. Drucker made a memo-  
6 randum?

7 A I do not know.

8 Q You know you certainly didn't talk about  
9 grand jury appearances?

10 A That's definite.

11 Q By the way, have you and Mr. Drucker, between  
12 the time that all this occurred and today, had a discussion  
13 about whether or not you recalled discussing grand jury  
14 appearances, face to face?

15 A I saw Mr. Drucker the last time that we had  
16 this proceeding, either the day before. He was up at the  
17 Strike Force office. I saw Mr. Drucker there. I do not  
18 know what he was looking at or he had discussions with  
19 Mr. McCaffrey.

20 Q You had none with him?

21 A But I had none with him -- well, I had some  
22 conversations with him, of course.

23 Q Did you tell Mr. Drucker that you just testi-  
24 fied taht he never told you about the grand jury proceeding?  
25 Did you tell him that?

1  
2 A I don't think that I saw Mr. Drucker after  
3 I testified. I saw Mr. Drucker before I testified.

4 Q Did you discuss with Mr. Drucker that you were  
5 going to testify? That you had never been told about the  
6 grand jury?

7 A I probably did. I don't recall. I don't  
8 recall whether he had mentioned that or not.

9 Q That wasn't too long ago, was it?

10 A No, about a month or two ago. I don't recall  
11 whether we had brought that up.

12 Q On April 25th, 1973, you had a conversation  
13 with Mr. Sontag on the phone?

14 A Yes.

15 Q Was that basically about what Judge Platt has  
16 just read to us?

17 A Yes, sir, referred to that memorandum.

18 Q On May 4, 1973, you again spoke with Sontag  
19 on the phone?

20 A Yes.

21 Q Was that the same basis?

22 A Yes it referred to the memorandum.

23 Q On May 22, 1972, you examined the Bianco file?

24 A In the Strike Force?

25 Q I'm asking you.



1  
2 A It must have been in the Strike Force and  
3 it refers -- I should have said the FBI file in the Strike  
4 Force.

5 Q So, as a matter of fact, you examined that  
6 FBI file on more than one occasion?

7 A Yes.

8 Q You examined it on May 22. You examined it  
9 on October the 3rd?

10 A Yes.

11 Q Was there a reason why you went back on  
12 October the 3rd, re-examined the FBI report and had a con-  
13 ference with Mr. Drucker?

14 A Yes, the reason I would examine the FBI file  
15 periodically is because the FBI may have had Mr. Bianco under  
16 surveillance and they sometimes could determine whether  
17 he's going places where he spends money and as a result  
18 I would be interested in that kind of information.

19 Q On July 10th, 1973, you had a conversation  
20 with Mr. Sontag?

21 A Yes.

22 Q What was that about?

23 A That also referred to that memorandum, the  
24 information he furnished us.

25 Q On August 17th, another phone conversation.

1  
2 A That's the same thing.

3 Q On November 25th, 1970, sir, if I told you  
4 there were two references in that FBI report with respect  
5 to Mr. Bianca testifying before a grand jury, would that  
6 jog your memory?

7 A It wouldn't change things any. It may have  
8 been there, but I didn't see it because it probably didn't  
9 interest me. I was looking for expenditures. If it was  
10 there, I didn't see it.

11 Q Did you ask Mr. Dillon what he said on those  
12 occasions?

13 A Mr. Dillon?

14 Q Yes.

15 A No, I only spoke to Mr. Dillon once on this  
16 case and that was a prior conference.

17 Q Did you ask Mr. Drucker whether he found out  
18 anything?

19 A No.

20 Q In questioning Mr. Bianco in the grand jury?

21 A I didn't know he went before a grand jury.

22 MR. LA ROSSA: May it please the Court, may  
23 the witness be shown -- I understand that you don't  
24 want me to be privy to it, the FBI record dated  
25 November 25th, 1970, being page 9 of the report of



May 10th, 1971, page 2.

THE COURT: November 25th, 1970, and May 10, 1971?

MR. LA ROSSA: Yes, one is page 9, the November report is page 9; the May 10th report is page 2.

THE COURT: This is the top one here, the May 10th, 1971 report, page 2 and the other one is November 25th, 1970, page 9, which I'm handing to you (handing to the witness).

THE WITNESS: Yes, thank you, your Honor.

O.K.

Q Have you seen them?

A Have I seen this?

Q Have you read both of them right now?

A I read that one (indicating) and -- Yes.

Q Did you read those two reports prior to today?

A I went through this file.

Q Does the May 10th report indicate the questions and answers, either in narrative form or general form, which were to Mr. Bianco's appearance before a grand jury?

A It mentions that Mr. Drucker issued a subpoena for the subject to appear before a federal grand jury on December 16th, 1970.

1  
2 MR. LA ROSSA: I assume, may it please the  
3 Court, if there was a report subsequent to December  
4 17th, 1970, giving a narrative of that examination  
5 before the grand jury, this summary --

6 THE COURT: This summary should contain it.  
7 My recollection -- and again I don't want to be  
8 bound by my recollection -- is that these are the  
9 two references we found on the subject. There's  
10 no Q-and-A's, and no summary of the minutes.

11 Do you have any recollection of the summary  
12 contained in the minutes?

13 THE WITNESS: I have no knowledge of any grand  
14 jury. I saw no minutes.

15 THE COURT: Other than those references there.  
16 I think that's correct.

17 MR. LA ROSSA: Mr. McCaffrey, so we won't  
18 have any problems, are there any other FBI reports,  
19 other than the ones produced before this court with  
20 respect to Mr. Bianco?

21 MR. MC CAFFREY: Not that I'm aware of.

22 MR. LA ROSSA: Thank you.

23 Q Were there any meetings -- Excuse me, wi -  
24 drawn, please.

25 On October 26, 1972, did you have a conversation



1  
2 with an FBI agent by the name of Welsh?

3 A I had a conversation with Mr. Welsh.

4 Q Was this with respect to Mr. Bianco?

5 A Yes.

6 Q Was it with respect to sources of income?

7 A No.

8 Q Was it with respect to his appearances before  
9 any courts or grand juries?

10 A No, it was not.

11 Q Will you tell us what the conversation  
12 was about?

13 A Yes, he advised me that during another sur-  
14 veillance, they learned that a certain expenditure was made.

15 Q Is that the only conversation you ever had  
16 with Mr. Welsh?

17 A That's the only one.

18 Q Are there any other agents of the FBI that  
19 you had conversations with with respect to Mr. Bianco?

20 A Only Mr. Tallia, who was present at a meeting  
21 when Mr. Dillon, Tallia, myself, my supervisor was present,  
22 and Drucker.

23 Q You told us you also examined the New York  
24 City file on Mr. Bianco, New York City Police?

25 A No, I just requested a criminal record.

1  
2 Q Is that all you did?

3 A That's all.

4 Q Did you have any conversations with anybody  
5 from New York City?

6 A No, I did not.

7 Q Your initial conversation with Mr. Smith, the  
8 Revenue agent --

9 A Yes.

10 Q Would you tell us whether he ever discussed  
11 sources of income with you?

12 A He may have, I don't recall it.

13 Q Did you make any notes with respect to it?

14 A No, I did not.

15 Q Mr. Smith had been the revenue agent handling  
16 the case, had he not?

17 A Yes.

18 Q Did he discuss with you anything about gambling  
19 income?

20 A I don't recall.

21 Q No recollection?

22 A I don't recall that.

23 Q Are you saying it didn't happen, or you don't  
24 recall?

25 A I don't recall it.



1  
2 Q Did you have any discussions with any of the  
3 other revenue agents with respect to this case about  
4 sources of income?

5 A I had discussions with a revenue agent, Marcia  
6 Tallia with respect to the case in general, but I don't know  
7 specifically about sources of income.

8 Q When did Marcia Tallia become the revenue  
9 agent in this case?

10 A I think sometime -- and I think -- sometime  
11 in mid-1972.

12 Q So he wouldn't be privy to any of the conversa-  
13 tions that occurred in 1970 and '71?

14 A Well, he would probably have spoken to Mr.  
15 Smith.

16 Q Is Mr. Smith still in the Revenue Service?

17 A Yes.

18 Q Did you, sir, ever go over to see any Assist-  
19 ant District Attorney in Kings County or any other county  
20 with respect to this case or any other case?

21 A No -- with respect to this case I did not.  
22 Now, with respect to any other case, I have been there many  
23 many years ago.

24 Q Were you there at any time during the years  
25 1971 and '72?

A No, I was not.

Q Do you have any relationship with anyone from the New York City Police Department that works with the tax forces in this building providing information?

A I have no relationship with any such person.

Q Do you know of anyone?

A No, I do not.

Q My question is, do you know anyone assigned to the Task Force in this building who are not federal agents but who are state agents assigned to this Task Force?

A I do not know any of them.

Q You're telling us --

MR. LA ROSSA: I think these were marked in the past, your Honor, two grand jury minutes, but I neglected to write down the numbers. Were they marked, Mr. McCaffrey?

MR. McCAFFREY: I don't think they were.

THE COURT: I know they were handed up to the Court.

MR. McCAFFREY: You agreed they should be part of the record. I don't think they were actually marked.

THE COURT: Guess not.

MR. LA ROSSA: Would you have me mark them



or refer to the dates?

THE COURT: Better mark them.

Let's get the dates.

THE CLERK: April 28, 1970, marked for identification as Defendant's Exhibit E.

(So marked)

THE CLERK: Another set of grand jury minutes marked Defendant's Exhibit F, April 4th.

(So marked)

Q Mr. Nahmias, are you telling us -- Withdrawn.  
Have you ever seen Defendant's Exhibit E  
for identification (handing to the witness)?

A No, I have never seen it.

Q Right up until today?

A Right.

Q I now show you what's been marked Defendant's  
Exhibit F and ask you if you ever have seen that before  
today?

A No, I have never seen this before.

Q Have you ever been told what the contents of  
Defendant's Exhibit E or F are by anyone prior to today  
(handing to witness)?

A Yes.

Q Who is that?

1  
2 A I think Mr. McCaffrey advised -- told me that  
3 Mr. Bianco had appeared before the state -- before the  
4 grand jury in Kings County.

5 Q Did he advise you what he testified to?

6 A No.

7 Q At these two appearances?

8 A No. Something -- he had mentioned something  
9 that -- about tax matters that he had asked him questions  
10 concerning his taxes. That was all.

11 Q When did this occur?

12 A After your motion was made.

13 Q You're still the agent who is assisting Mr.  
14 McCaffrey in the prosecution of this case?

15 A Yes.

16 Q And after hearing that there were questions  
17 asked of Mr. Bianco about tax matters, you had no desire to  
18 read those?

19 A It couldn't do me any good. My tax case is  
20 in. I can't change it now. The information has already  
21 been filed.

22 Q You didn't want to make a determination whe-  
23 ther that questioning on the tax matters might lead you to  
24 a new witness or new source of income?

25 A The information has already been filed. My



1  
2 investigation is completed. This grand jury testimony would  
3 do no good for me (indicating).

4 Q You're not at all interested?

5 A No, sir.

6 Q Not even curious, suggested that you should  
7 read this, is that right?

8 A That's right.

9 MR. LA ROSSA: No further questions.

10 THE COURT: I have been flipping through  
11 these FBI requests to determine income and  
12 whether there is reference to Kings County grand  
13 jury. About halfway through I haven't found any  
14 Kings County references. I have found certain  
15 references to possible sources of income. Would you  
16 like me to run down those with you?

17 MR. LA ROSSA: Yes, I would.

18 THE COURT: These are by no means conclusive.

19 MR. LA ROSSA: Might we approach the bench.

20 THE COURT: Certainly.

21 ---  
22 THE COURT: Do you want the reporter?

23 MR. LA ROSSA: No, sir.

24 (Side bar discussion off the record.)

25 THE COURT: On the record.

We'll suspend for a five-minute recess.

(Recess)

THE COURT: May the record show Mr. Castellano is sitting with Mr. LaRossa at his table.

## REDIRECT EXAMINATION

BY MR. MC CAFFREY:

Q Mr. Nahmias, were you ever assigned as a Strike Force representative from the Internal Revenue Service to the Brooklyn Strike Force?

A I was a member of the Internal Revenue Service, the Strike Force Group.

Q Sir, where did you work, in the Strike Force office itself or the Internal Revenue office?

A Internal Revenue office.

Q Were you at any time assigned to work in the Strike Force office itself?

A No.

Q About how frequently would you say you saw Mr. Drucker during the course of your investigation on the Bianco case?

A Approximately six times.

Q Would you tell us, please, Mr. Nahmias, what procedures you followed after the Bianco case was assigned to you, what investigative steps did you take?

A Well, I went to possible third parties in order to determine what Mr. Bianco's expenditures were



1  
2 during the years under investigation.

3 Q What do you mean by third parties?

4 A Well, people that he may have given money to,  
5 spent money with, etc.

6 Q What other steps did you take in investigat-  
7 ing this case?

8 A Well, I looked at the prior investigation,  
9 the prior report of the investigation of Mr. Bianco.

10 Q What types of places did you inquire of in  
11 connection with your investigation?

12 A I went to Mr. Bianco's landlord, to determine  
13 what rent he paid. I went to the telephone company, the  
14 Edison Electric Company, places where he may have purchased  
15 food, any cost of living items.

16 Q Did you make any inquiries by mail in connec-  
17 tion with this investigation?

18 A By mail?

19 Q Yes.

20 A Yes.

21 Q About how long did you spend on this investi-  
22 gation altogether?

23 A Approximately eighteen months.

24 MR. MC CAFFREY: No further questions.

25 MR. LA ROSSA: Now I have a few more.

## REXCROSS EXAMINATION

BY MR. LA ROSSA:

Q Tell me, Mr. Nahmias, under normal circumstances, when you're assigned a case, intelligence, for example, case similar to this under 7203, and you prepare your examination and your reports, do you notify the United States Attorney of any of the actions that you took?

A No, sir.

Q As a matter of fact, he doesn't even know that an examination has been made of a particular subject; isn't that correct?

A Generally he does not until he gets my report.

Q As a matter of fact, he doesn't get your report until Regional Counsel passes on it?

A Generally he does not.

Q And he doesn't get your report until Regional Counsel approves it, sends it to the Department of Justice, Tax Department, who then approves it and sends it, the entire file, to the United States Attorney in a particular district recommending prosecution, isn't that so?

A Generally that's true.

Q Generally that is not what occurred here?

A Except in this case I gave them a copy of the report stating my case went to Regional Counsel.



1  
2 Q Further than that, you informed Mr. Drucker  
3 as you went along during those eighteen months basically of  
4 what your investigation was?

5 A I informed him, yes.

6 MR. LA ROSSA: No further questions.

7 THE COURT: Mr. Nahmias, there are a number  
8 of -- just flipping through the FBI reports, there  
9 are a number of references to possible sources of  
10 income. Did you attempt to pursue any of those,  
11 any of the sources developed?

12 THE WITNESS: I don't know which sources --

13 THE COURT: For example, references to possible  
14 ownership in a restaurant, cafe.

15 THE WITNESS: I attempted to pursue it.

16 THE COURT: Any of them develop?

17 THE WITNESS: No, it did not.

18 THE COURT: There is also a reference, I think,  
19 hearsay testimony of some shylocking activities.  
20 Did you attempt to pursue any of that?

21 THE WITNESS: Yes.

22 THE COURT: Did any of them develop?

23 THE WITNESS: Yes.

24 THE COURT: Some of them did develop?

25 THE WITNESS: Yes.

1  
2 Q Could you tell us which ones developed?

3 MR. McCAFFERY: Objection, your Honor. I don't  
4 see how it's pertinent to this hearing.

5 THE COURT: Neither do I, unless they came --  
6 and the only reason I asked the question is I really  
7 want to find out if there is anything on my subse-  
8 quent investigation of that file indicating that it  
9 came from the grand jury but if it didn't, I don't  
10 see the relevancy.

11 MR. LA ROSSA: I can't tell you that unless  
12 I know the answer. That's my problem.

13 THE COURT: I know, but did you notice in  
14 your examination of the file whether any of that  
15 information came from the grand jury record?

16 THE WITNESS: It did not.

17 This particular piece of evidence did not  
18 come from any grand jury.

19 THE COURT: It came from --

20 THE WITNESS: Another source.

21 THE COURT: Another source.

22 The one piece of information that I noticed  
23 on that subject, that shylocking did come  
24 from another source. It didn't appear to come from  
25 any grand jury. I'll say that at the moment.



1  
2 MR. LA ROSSA: Is your Honor sustaining the  
3 objection?

4 THE COURT: At this time. I'm not saying  
5 if I find something on further examination of that  
6 file, if I sense something different, I'll give you  
7 further opportunity.

8 We'll take a recess.

9 (Recess)

10 MR. LA ROSSA: I think I informed your chambers  
11 by phone -- Mr. Thayre -- I think I was free until  
12 one o'clock. My problem is an appearance that  
13 I have promised another judge at two, and a meeting  
14 this afternoon, may it please the Court, of the  
15 sentencing committee that was appointed by Judge  
16 Kauffman.

17 Usually Judge Lombard prepares an extensive  
18 amount of matters to take up with these things.  
19 I'd feel terrible missing it, quite frankly. We  
20 devote so much time before the meetings begin.

21 THE COURT: I understand.

22 MR. LA ROSSA: If it wouldn't --

23 THE COURT: Well, Mr. McCaffrey, where are  
24 your witnesses from?

25 MR. MC CAFFREY: Internal Revenue.

1 THE COURT: They can be recalled.

2 MR. MC CAFFREY: That's correct.

3 THE COURT: How long will they take?

4 MR. MC CAFFREY: I don't know how long.

5 MR. LA ROSSA: Very short.

6 MR. MC CAFFREY: My direct examination will  
7 be brief. No more than five minutes apiece.

8 MR. LA ROSSA: Very short.

9 THE COURT: We should take it now, but I hate  
10 to keep the jury waiting. It would probably mean an  
11 hour between the two.

12 MR. LA ROSSA: Yes.

13 Tomorrow I'm to argue in the Appellate  
14 Division.

15 LAW CLERK: It's on for December 6th.

16 MR. LA ROSSA: That would be fine.

17 THE COURT: Let's put it on for December 6th  
18 for the balance of this hearing.

19 MR. LA ROSSA: I think we can complete it in  
20 that afternoon.

21 THE COURT: I'm sorry.

22 MR. LA ROSSA: That's all right, sir.

23 ---  
24  
25



1 THE COURT: Did you get the memorandum?

2 MR. LA ROSSA: No, sir.

3 MR. McCAFFREY: I have a copy of it. I came in  
4 and found a copy on my desk. I was out sick. I thought  
5 perhaps a copy was going to be mailed to Mr. La Rossa.

6 THE COURT: Do you have any reason as to why  
7 you should not have a copy of it?

8 MR. McCAFFREY: I have no objection.

9 THE COURT: How long do you think you are going  
10 to be?

11 MR. LA ROSSA: Very short, I would think.

12 As a matter of fact, the key witness I had is not  
13 here.

14 MR. McCAFFREY: I think you are referring to  
15 David Katz, a former Assistant United States Attorney  
16 of Kings County. I called Mr. Katz Wednesday of last  
17 week. I called him for 2 o'clock this afternoon so  
18 that he would testify. I called again a little while  
19 ago, about 1:30 and apparently he has a telephone  
20 answering service and the girl said he was out for  
21 lunch. I left a message that this hearing was on for  
22 2 o'clock. I left the telephone number with one of the  
23 revenue agents to keep calling this afternoon to see  
24 if he can get here at all if possible.

25 THE COURT: Have you any questions of Special

1 Agent Namius?

2 MR. LA ROSSA: I have concluded my examination  
3 of him.

4 THE COURT: You wish to examine Mr. Katz?

5 MR. LA ROSSA: I would like to examine Mr. Katz  
6 because he is the Assistant District Attorney that  
7 actually --

8 THE COURT: We will have to wait until he  
9 arrives.

10 MR. McCAFFREY: I think, your Honor, a review  
11 of the record has shortened an awful lot of the Court's  
12 time, and based upon that and accepting your review of  
13 the records I think we are now to the point where  
14 Mr. Katz becomes the key and from him possibly another  
15 member of the District Attorney's office. But I do not  
16 anticipate that.

17 MR. LA ROSSA: I think I would like to defer  
18 calling any further witnesses until we see what shape  
19 Mr. Katz' testimony takes on the witness stand. I do  
20 not want to be calling unnecessary witnesses.

21 THE COURT: I have one motion I will take while  
22 we wait for Mr. Katz.

23 Who wishes to examine Mr. Katz first?

24 MR. McCAFFREY: Perhaps I should examine him  
25 briefly, your Honor, to set the framework and let



1 Mr. La Rossa cross-examine.

2 (A short recess was taken.)

3 D A V I D K A T Z , having been first duly sworn by the  
4 Clerk of the Court, took the witness stand and testified  
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. McCAFFREY:

8 Q Mr. Katz, what is your present profession or  
9 occupation?

10 A I am in the private practice of law. I am an  
11 attorney located at 16 Court Street, Brooklyn, New York.

12 Q Prior to that were you an Assistant in the Kings  
13 County District Attorney's office?

14 A I was in the Queens County, prior to going into  
15 private practice. Before that I was in Kings County District  
16 Attorney's office.

17 Q During what period of time were you Assistant in  
18 the Kings County District Attorney's office?

19 A From March 1969 to the early part of 1974.

20 Q Mr. Katz --

21 MR. McCAFFREY: I ask these documents be marked  
22 for Identification as Government's Exhibits 1, 2, 3, 4  
23 and 5.

24 THE COURT: Were these marked?

25 MR. McCAFFREY: I do not know if they were marked

as exhibits.

THE COURT: Is this Kings County?

MR. McCAFFREY: Yes.

THE COURT: I have Kings County Exhibit E and F.

MR. McCAFFREY: I withdraw the request for having them marked.

THE COURT: April 14 is Exhibit F and April 28 is Exhibit E.

MR. McCAFFREY: I have March 24, April 14 and April 28 and March 14, your Honor.

THE COURT: I think I only have two in evidence.

MR. McCAFFREY: I suggest we mark them E-1, 2 and 3.

THE COURT: E is April 28. Set that aside.

MR. LA ROSSA: F is April 14.

THE COURT: We have those already marked.

MR. McCAFFREY: Then we request that March 24 be marked as Exhibit G and admitted into evidence.

That is March 24 and May 14 be marked as Exhibit H.

THE CLERK: So marked.

MR. McCAFFREY: I have a covering letter here, your Honor, that I request be marked as Exhibit I.

THE CLERK: So marked.

Q I show you Government's Exhibits E, F, G, H and



1  
2 I in Evidence and I ask you to look at these, please. Have  
3 you had a previous opportunity to examine them?

4 A Yes, I did a while back while you were present  
5 and I think Mr. La Rossa was present at that time at that  
6 table and I cursorily went over some of it at that time. I  
7 forget the period of time it was but it was maybe a month back  
8 or so.

9 Q I direct your attention to Exhibit I. Did you  
10 handle those Grand Jury proceedings, Mr. Katz?

11 A Yes, a part of them I did. There was a whole  
12 series of witnesses and I handled some.

13 Q As far as Mr. Bianco was concerned, Nicholas  
14 Bianco, the transcripts received from the Kings County District  
15 Attorney's office, indicate that he appeared on March 24,  
16 April 14, April 28 and May 14. Does that coincide with your  
17 recollection?

18 A Well, after look at the Grand Jury minutes,  
19 the testimony, those are the dates. I do not have any inde-  
20 pendent recollection of the dates that he appeared there but  
21 if it says so on here, those are the dates.

22 Q After Mr. Bianco had concluded his testimony  
23 before the Kings County Grand Jury did you discuss the testimony  
24 with anyone in the Internal Revenue Service?

25 A No, sir, not to my recollection.

Q Did you discuss his testimony with anyone from the United States Attorney's office?

A No, not to my recollection.

Q With anyone from the Brooklyn Strike Force office?

A No.

Q Any Government agency or attorney?

A No, I did not. You mean Federal?

Q Yes.

A No, I did not.

MR. McCAFFREY: I have no further questions.

CROSS-EXAMINATION

BY MR. LA ROSSA:

Q Mr. Katz, on March 24, 1970, Mr. Bianco was subpoenaed before the Grand Jury in Kings County, isn't that correct?

A Yes, I assume he was.

Q At that time he was not given immunity and declined to answer, am I correct?

A That is correct, according to the testimony of that date.

Q I assume that you have no independent knowledge of the facts you are testifying to.

A That is correct, I am just testifying to what



1  
2 I read and I have no independent recollection of what took  
3 place four and a half years ago.

4 Q On April 14, 1970 he was again brought before  
5 a Grand Jury in the County of Kings, isn't that correct?

6 A According to my minutes, he was.

7 Q And you, sir, were the Assistant United States  
8 Attorney asking him questions at that time?

9 A I was the Assistant District Attorney asking --

10 Q Assistant District Attorney -- I am sorry, we  
11 get so accustomed to saying United States Attorney.

12 Did there come a time on that appearance when you  
13 informed Mr. Bianco that he had been granted immunity?

14 A Can I peruse these minutes?

15 Q Please do.

16 A Yes, on page 37 the request was made to the Grand  
17 Jury at that time to grant immunity and they subsequently  
18 voted immunity.

19 Q Now, sir, were you making a particular investiga-  
20 tion at this time that you had Mr. Bianco before the Grand  
21 Jury?

22 A To my recollection, to the best I can remember,  
23 Mr. La Rossa, the investigation was into the Trout mystery  
24 shooting and alleged racketeering in parts of Brooklyn, indus-  
25 trial racketeering, labor racketeering and other crimes.

1  
2 Q Did you have any other discussions with any  
3 members of your staff before you examined Mr. Bianco on the  
4 day the Grand Jury granted immunity?

5 A I have no independent recollection but normally  
6 I talked with Mr. Seidman, who was my Bureau Chief at the  
7 time, and I might have had conversations with members of the  
8 Police Force pertaining to this individual. I do not know,  
9 I have no independent recollection.

10 Q Have you ever had conversations with an FBI  
11 agent or agents before examining a witness?

12 A Only once I remember receiving information  
13 because the case stood out in my mind. The Agent's name was  
14 Dan Kneely, that was the only time.

15 Q Was that with respect to Mr. Bianco?

16 A No, it was with respect to another individual.  
17 The only reason I remember it is because that was the only  
18 nice looking blond that ever appeared in that investigation  
19 and that is how it stands out in my mind, a young lady who was  
20 brought in to testify.

21 Q So, Mr. Katz, you are saying that you know that  
22 you did not speak to an FBI agent before examining Mr. Bianco  
23 on any of these occasions?

24 A I do not remember ever speaking to one. I have  
25 no independent recollection of ever speaking to one. Excuse



me, that is all.

Q Mr. Katz, after reviewing what has been marked Defendant's Exhibit F in evidence for the purpose of this hearing, did you ask Mr. Bianco about any shooting in those minutes?

A No I do not see being asked that in that session.

Q Did you ask him during that session anything about racketeering in business?

A Well what I consider racketeering was also bookmaking, shylocking is considered part of racketeering as we defined it at that time.

Q Did you ask him about bookmaking?

A I started to I think by some of the questions as I look at it.

Q Let me refer you to page 38, if I may. That is approximately the place where you informed him that he had immunity. Is that right?

A Yes.

Q And on page 39 am I correct in stating you told him what immunity meant?

A Yes in substance I did that.

Q And from page 39 to 43 am I correct in stating that each question you directed to Mr. Bianco was whether he

1  
2 used someone or not?

3 A Yes, we had asked him about his affiliations with  
4 people.

5 Q On page 43 sir, did you ask him what business he  
6 was in?

7 A Page 43 -- yes, I did.

8 Q He informed you he was a gambler, that is right?

9 A That is his response.

10 Q From that point on you asked him about income  
11 and whether or not he filed tax returns, am I correct?

12 A Yes, those questions were asked.

13 Q Thereafter you asked him about his ability to  
14 purchase cars, whether he had bank accounts, where he kept his  
15 money and whether he reported this money on his income tax  
16 return, is that right?

17 A Yes, those questions were asked, yes.

18 Q At the time you asked these questions you had  
19 had some experience as a prosecutor in the Brooklyn District  
20 Attorney's office, am I correct?

21 A Yes, just about a year.

22 Q Did you believe at that time sir that you had  
23 any jurisdiction over criminal tax matters?

24 A No I did not. We did not have jurisdiction  
25 over tax matters dealing with federal income tax.



1  
2 Q So these questions were certainly not directed  
3 toward any criminal activity that you were investigating, is  
4 that right?

5 A I would not say that.

6 I don't know, depending on the responses it  
7 might have revealed something later on but it did not as it  
8 turned out, depending on what the witnesses' answers were  
9 going to be.

10 Q Do you know, sir, whether you gave any of that  
11 information -- withdrawn.

12 What was the procedure at that time sir after  
13 the witness testified in the Grand Jury? When were the minutes  
14 transcribed?

15 A I could not tell you when they were transcribed  
16 because there were shorthand reporters at the time, Grand  
17 Jury stenographers and I do not know what their schedule was.  
18 I could not tell you when the minutes were transcribed, one or  
19 two weeks or a day later, I don't know.

20 Q What was the general procedure?

21 A There was an outstanding procedure when minutes  
22 were finished to get them as soon as possible.

23 Q Am I correct to say that within 30 days you  
24 would most certainly have had a copy of those minutes?

25 A I cannot give you a yes or not on that, Mr.

1  
2 Rossa, because I do not know when they were finished. Some-  
3 times we got them right away, sometimes we didn't, it all  
4 depended on the number of Grand Jury stenographers that were  
5 working and they were fluctuating from year to year. I  
6 couldn't tell you.

7 Q Did you personally receive a copy of those  
8 minutes after they were transcribed?

9 A After they were transcribed they come up and  
10 they were assigned to a clerk who would put them in a file  
11 cabinet. We have a file cabinet and I would go to the file  
12 cabinet when I wanted to look at the testimony and see whether  
13 it was transcribed if it was in there.

14 Q May we assume sir, for the purposes of this  
15 hearing, that you would read the prior Grand Jury testimony  
16 before you would normally examine a witness the subsequent  
17 time?

18 A Yes, right, I would try to get the whole  
19 testimony before coming in.

20 Q Do you know whether any agent of the Federal  
21 Government asked you to ask those questions sir?

22 A Not to my recollection, Mr. La Rossa.

23 Q You have no recollection of that?

24 A I have no recollection of that.

25 Q Do you have any recollection as to why Mr. Katz



1  
2 were asked those questions, why you asked those questions?

3 A Not independently but if he said he was a  
4 gambler I would naturally be curious to explore that avenue  
5 because gambling in New York is illegal per se, I mean by  
6 statute.

7 Q Mr. Katz, the gambling he described, was that  
8 illegal as well?

9 A Not when he gave the answers no, he said he was  
10 a gambler at the track.

11 Q Would you now look at Exhibit F, I am sorry  
12 Exhibit E, which is April 28, 1970. Did you again ask Mr.  
13 Bianco questions and did he give you answers?

14 A Yes he did.

15 Q Did you again question him about his sources of  
16 income and whether or not he filed tax returns?

17 A Can I just peruse those for a second?

18 Q May I refer you to page 16 of the minutes. It  
19 may assist you a little bit.

20 A Yes, I asked him about these activities on that  
21 date, about what he did for a living.

22 Q Mr. Katz, at that point he had told you already  
23 that he was basically a professional gambler and he had not  
24 filed income tax returns, am I correct?

25 A Yes.

1  
2 Q He told you that on April 14, right?

3 A Right.

4 Q On April 28th again you asked him the sources of  
5 income and whether he filed a tax return. May I ask you  
6 whether on April 28th you were intending to determine whether  
7 or not he committed a crime with respect to those questions?

8 A I wouldn't know, I do not remember why. I  
9 remember I asked him those questions if that is what you are  
10 asking. I could not give you the reason why they were asked.

11 Q Do you also during that session ask him how much  
12 he paid in rent, did you not?

13 A Yes I did.

14 Q And you asked him how he pays the rent, didn't  
15 you?

16 A Yes.

17 Q Were those questions asked to determine whether  
18 or not Mr. Bianco had violated a state law, Mr. Katz?

19 A I could not give you an answer because I do not  
20 know, I do not remember why or what purpose those questions  
21 were asked for now.

22 Q I now ask you to look at what is marked Exhibit H  
23 in evidence dated May 14, 1970.

24 A May 14 -- yes.

25 Q That was a very short appearance, was it not?



1  
2 A That is right.

3 Q And the only purpose of your questions, as I  
4 correct sir, Mr. Katz, was to determine where he kept his  
5 money, whether he had bank accounts and where they are  
6 located, is that right?

7 A Yes, I asked where he had a checking account or  
8 bank accounts. Let me peruse the rest. He refused to answer  
9 certain questions because he said it was beyond the scope of  
10 the investigation.

11 Q For example, the sources of funds, isn't that  
12 right?

13 A Right.

14 Q Were you asking those questions because you  
15 wanted to find out whether a state crime was committed?

16 A Well, it might have, I don't know why I asked it  
17 at that time but I could see the purpose of maybe usury or  
18 some other crime which is in the penal law, which he might be  
19 able to assist.

20 Q But you certainly were not trying to find out  
21 during those questions Mr. Katz, were you, whether Mr. Bianco  
22 filed a tax return and what his sources of income were?

23 A Could you repeat that again.

24 Q You were not trying to find out, were you not,  
25 whether or not Mr. Bianco had filed a tax return and what his

1 sources of income were?

2 A I think on May 14 I do not refer to the tax  
3 returns. All I asked him where his funds were kept and where  
4 his sources were.  
5

6 Q Referring you back to Defendant's Exhibit E  
7 again, which is April 28, did you also ask him at that time  
8 whether or not he purchased an automobile?

9 A Yes, that was asked. I know it was asked in one  
10 of the sessions. I remember perusing it in the minutes.

11 Q Did you ask him at that time where he obtained  
12 the financing to purchase the automobile?

13 A I have to look at the minutes. I do not recall  
14 if I asked him that question. I do not see that Mr. La Rossa  
15 on April 28 in the testimony. But I know it is in one of them.  
16 I asked him where he purchased the car and I think he said it  
17 was a Buick.

18 Q Let me ask you this Mr. Katz: when you were in  
19 the Rackets Bureau in Brooklyn did you have anyone who worked  
20 as a liaison between your office and the federal governmental  
21 agencies?

22 A Do you mean police officers?

23 Q Either police officers, assistant district  
24 attorneys or anyone responsible to you or your staff.

25 A Detective John Capabianco was the police officer



1  
2 who normally made most of the contacts with federal law  
3 enforcement agencies.

4 Q Will you tell us whether he was the man in the  
5 Brooklyn District Attorney's office during the times that you  
6 had Mr. Bianco before the Grand Jury?

7 A Yes, he was there and he was working on the  
8 investigation at that time.

9 Q Was he also working on this investigation?

10 A Yes he was.

11 (Continued on next page)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## CROSS-EXAMINATION

BY MR. LA ROSSA (cont'd.)

Q Can you tell us whether Mr. Capabianco asked you any of the questions that you submitted to Mr. Bianco?

A I have no recollection of him asking me but I know he worked with me. He was one of the two detectives assigned at that time.

Q To this investigation?

A Yes.

Q Would he on occasion give you questions and when I say questions I am not referring to the actual words but would he suggest lines of inquiry with respect to a witness?

A Not normally. He normally gave me background for information as to where they were from, allegedly what crime family they were from but I do not remember him ever asking me to ask this specific question or that specific question.

Q Did Mr. Capabianco have access to those minutes?

A Not as far as I know. They were kept in a cabinet and they were sealed. They were sealed in a folder and only a district attorney had access and one clerical girl who had a key but she never went into the files.



Q Did you ever show him those minutes?

A Not to my recollection.

Q Did you ever discuss with him the answers that Mr. Bianco gave?

A No I did not discuss it, not to my recollection. I do not remember discussing the testimony with him.

Q Do you ever recall discussing with Mr. Capabianco the answers a witness gave in the Grand Jury?

A No.

Q Never?

A No, that was against the law. We were told that initially when we started on the job.

THE COURT: What was your answer?

THE WITNESS: It was against the law to discuss a person's testimony with anyone outside of another assistant district attorney.

THE COURT: You are convinced you did not?

THE WITNESS: As far as I know I never discussed testimony with anyone outside my superior or another assistant district attorney working with me on the case.

Q Did you know Mr. Druker during the years, James Druker?

A No, that name does not recall anything.

Q Do you know whether Mr. Capabianco had conferences with the Brooklyn Task Force before you asked Mr. Bianco any questions?

A No, I have no recollection of that.

Q Do you know whether Mr. Capabianco was assigned at any time to the Brooklyn Task Force?

A No I have no knowledge of that. Detective Capabianco?

Q Yes.

A I have no knowledge of that.

Q Do you know whether he would come over to the Brooklyn Task Force at times?

A No I do not know if he would. I do not know if he did.

Q If Mr. Capabianco suggested to you areas of questions would a report have been prepared?

A Would a memorandum have been prepared?

Q Yes, a memorandum or report.

A It is possible if he had information he would prepare a report which would reach my desk or reach another district attorney's desk and review it.

Q What would happen to it?

A The report?

Q Yes.



2 A Well, maybe we would ask for a more detailed  
3 investigation or if it was detailed enough we would ask  
4 questions on it.

5 Q What would happen to the report after you used  
6 it, would it be filed?

7 A Yes, the report would normally be in the file  
8 of the individual that came before the Grand Jury or who was  
9 being worked on. There were separate individual files.

10 Q For example Mr. Bianco?

11 A Yes.

12 Q So if there were any memoranda submitted to  
13 you with respect to Mr. Bianco would copies of those be in  
14 the Brooklyn District Attorney's office at this time?

15 A As far as I know they should be there if  
16 there were any reports made.

17 Q And how would they be filed? I am asking you  
18 this so it will make things a little easier for us.

19 A To my recollection if the detective made out a  
20 report I would probably have a copy and one would be put in  
21 the file itself and maybe Mr. Seidman would forward a third  
22 copy for his perusal.

23 Q Do you know whether you had any conversations  
24 with Mr. Seidman about any of the matters that you asked Mr.  
25 Bianco?

1 A I have no recollection of talking to Mr.  
2  
3 Seidman. I know I have had numerous conversations with him  
4 with reference to the investigation. With this specific  
5 person I could not answer if I did or not.

6 Q Do you know whether Mr. Seidman suggested  
7 questions to you with respect to Mr. Bianco?

8 A I have no recollection of that, Mr. La Rossa,  
9 one way or another. I would be lying if I told you yes and  
10 I would be lying if I told you no.

11 Q Mr. Katz, if we made a determination of any  
12 memoranda prepared with respect to Mr. Bianco they would be  
13 listed under his name?

14 A It would be listed under his name and also the  
15 detective if he keeps copies of the reports that he makes up,  
16 he would have a copy.

17 MR. LA ROSSA: I have nothing further.

18 MR. McCaffrey: I have no further questions.

19 MR. LA ROSSA: I think that possibly with a  
20 little help from Mr. McCaffrey, the next thing that I  
21 would ask the Court is that they obtain any memoranda  
22 if there are any. I think we are at the core of the  
23 problem if there are any. I can understand Mr. Katz  
24 not recalling what happened in 1970 and I would be  
25 very happy to serve a subpoena over there but it would



1 seem to me you would get a lot more cooperation with  
6 2 a phone call, Mr. McCaffrey, if the Court would  
3 suggest it in that matter.

4 THE COURT: I do not see why you cannot make  
5 a call. Assuming they turn up nothing, what do you  
6 want to do, talk to Mr. Capabianco?

7 MR. LA ROSSA: I think I would like a short  
8 time in which to make that determination and possibly  
9 seek him out myself and if I find it to be fruitless  
10 I will then inform the Court I am desirous of bringing  
11 him back.

12 THE COURT: Do you know how to get hold of him?

13 MR. LA ROSSA: He is with the District Attorney's  
14 office.

15 THE WITNESS: Yes he is.

16 THE COURT: Are you going to let me know when  
17 you are through?

18 MR. MCCAFFREY: You are not thinking in terms  
19 of doing it this afternoon?

20 MR. LA ROSSA: No.

21 MR. MCCAFFREY: I would suggest I write to the  
22 Kings County District Attorney's office. I think that  
23 would be the most productive way of getting results,  
24 to be followed by a phone call within a few days if I  
25 do not receive an answer. I will send Mr. La Rossa

7  
1 and the Court copies of whatever correspondence I get.  
2 I assume it will take a week or so to accomplish that.  
3 We will find out whether Mr. Capabianco is available,  
4 we will locate and find out if he is willing to come  
5 in and if he wants a subpoena we will let you know.

6 THE COURT: Assuming that is all fruitless  
7 that is the end of it, right?

8 MR. LA ROSSA: Yes it is.

9 THE COURT: And then where do we go?

10 MR. LA ROSSA: That will complete the hearing.

11 THE COURT: That will complete the hearing.

12 As far as I can see, based on what we have so  
13 far there is not much here. Maybe I missed something.

14 MR. LA ROSSA: We have not been able to  
15 produce any affirmative evidence that the information  
16 that the Government has came from the Brooklyn  
17 District Attorney's office at this time. I guess I  
18 would be in complete error if I suggested we did.

19 THE COURT: You would have to point out where  
20 it was.

21 Is there any other discovery you need?

22 MR. LA ROSSA: I think the Government has  
23 complied with everything I asked it for. I do not  
24 believe there is certainly anything that requires a  
25 hearing or anything like that.



1 THE COURT: No other discovery you want?

8 2 MR. LA ROSSA: I do not believe there is  
3 anything, no sir.

4 THE COURT: So that we can go ahead with the  
5 trial as soon as you are ready for it.

6 MR. LA ROSSA: That is correct.

7 THE COURT: Let me know as quickly as you can  
8 whether you want any further testimony. Hopefully  
9 perhaps we can set it down for some kind of a  
10 definite date. I will continue without a date in the  
11 interim until I hear from you.

12 MR. LA ROSSA: Very good sir.

13 THE COURT: Do not let it lag Mr. McCaffrey.  
14 As soon as you find out perhaps you had better ask us  
15 to put it back on the calendar.

16 MR. MCCAFFREY: As soon as I get an answer I  
17 will advise your Honor and Mr. La Rossa.

18  
19 \* \* \* \*

1  
2 (At 4:10 p.m. the following occurred  
3 in the presence of the jury.)

4 THE COURT: Now, ladies and gentlemen,  
5 we are going to have opening statements by  
6 the counsel, first counsel for the Government  
7 and then if he chooses, counsel for the  
8 defendant.

9 I should caution you, as I indicated  
10 in my remarks a moment ago, that statements of  
11 counsel are not evidence in the case. The  
12 evidence in the case you will hear from the  
13 testimony of the witnesses on the stand and  
14 the exhibits which are marked into evidence.  
15 The statements of counsel at no point are  
16 evidence in the case, they are merely guides  
17 for you to consider and to guide you through  
18 the evidence in the case, but they are not to  
19 be taken by you as evidence.

20 All right, Mr. McCaffrey.

21 OPENING STATEMENT BY MR. MC CAFFREY

22  
23 MR. MC CAFFREY: Ladies and gentlemen  
24 of the jury:

25 My name is Donald McCaffrey. I am the



1  
2 government attorney who will be prosecuting  
3 this case.

4 The defendant is charged with failure  
5 to file income tax returns for the years  
6 1967, 1968, 1969 and 1970 and 1971.

7 Now, the requirement for the years  
8 1967, '68 and '69 was - - anyone who had income  
9 of \$600.00 or more was required to file an  
10 income tax return. For the years 1970 and 1971,  
11 the requirement with respect to a married person,  
12 as the defendant was during those years, was  
13 that anyone with an income of \$2,300.00 or more  
14 was required to file an income tax return.

15 Now this is not the type of situation  
16 where the defendant was receiving W2 forms from  
17 an employer stating that he earned X number of  
18 dollars during the year and that is why a number  
19 of years had been withheld from taxes. We don't  
20 have that kind of a situation here.

21 We have rather a situation where the  
22 defendant was apparently without assets at the  
23 end of the year 1966. To illustrate this, his  
24 car was repossessed during that year, a judgment  
25 had been obtained against him some time previously

1  
2 in 1965 - -

3 MR. LA ROSSA: I object to this.

4 THE COURT: This is what he is going  
5 to prove.

6 MR. MC CAFFREY: (Addressing the jury)  
7 - - and that judgment proved to be uncollectable,  
8 indicating that the defendant was without assets  
9 at the beginning of that period, which is the  
10 beginning of 1967.

11 The defendant stated that he was self-  
12 employed.

13 Now we are not in a position and cannot  
14 show exactly how much the income of the defendant  
15 was during each one of those years from 1967  
16 to 1971. We can however show some of the  
17 expenditures that the defendant had during that  
18 period, and in light of the fact that he was  
19 apparently without assets at the beginning of  
20 1967, these expenditures must have constituted  
21 income.

22 So you will hear throughout the course  
23 of the trial a number of witnesses testifying  
24 as to expenditures made by the defendant for  
25 rent, for utilities, for payments on an automobile,



1  
2 et cetera, adding up to a certain amount, well  
3 in excess of the minimum requirement figure in  
4 each of the years 1967 through 1971 in which  
5 he is charged with a failure to file tax returns.

6 I think the testimony will indicate that  
7 the defendant lived quite comfortably during  
8 those years in which he was not filing, and I  
9 think that as you hear the testimony related to  
10 you by the government witnesses you will come to  
11 realize that the defendant's income in each one  
12 of those years was well in excess of the minimum  
13 amount required for filing.

14 OPENING BY MR. LA ROSSA

15  
16 MR. LA ROSSA: (Addressing the jury)

17 May it please the Court;

18 Mr. McCaffrey;

19 Madam Forelady, ladies and gentlemen  
20 of the jury:

21 My name is LaRossa and I represent  
22 Nicholas Bianca.

23 One of the things I want to reiterate  
24 that Judge Platt has told you a moment ago is  
25 the statement we make to you is not evidence.

Decara-cross

THE COURT: But not coming up with one, that would be the end of the search?

THE WITNESS: Right.

MR. LA ROSSA: I have nothing further. Thank you.

MR. MC CAFFREY: I have no further questions, your Honor.

THE COURT: You may step down.

(Witness excused)

A L A N H. Y O U N G, 205 West End Avenue, Manhattan, called as a witness, having been duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: Full name, and spell your last name.

THE WITNESS: Alan, A-l-a-n, H., Young, Y-o-u-n-g.

DIRECT EXAMINATION

BY MR. MC CAFFREY:

Q Mr. Young, what is your present occupation?

A I'm an attorney at law.

Q Are you associated or a partner in some law firm in this city?

A I am associated with Lindenbaum & Young,



Young-direct

attorneys at 16 Court Street, Brooklyn.

Q Are you here today in compliance with a subpoena duces tecum served on your firm?

A Yes, I am.

Q Do you have with you, before you, certain documents that require that subpoena duces tecum to Nicholas L. Bianco?

A Yes, I do.

Q Did your firm, Mr. Young, obtain a judgment against Nicholas L. Bianco in 1965?

MR. LA ROSSA: Objection to the form of the question.

THE COURT: Yes, sustained.

THE COURT: You say you have records pertaining to Mr. Bianco?

THE WITNESS: Yes.

THE COURT: Why don't you mark the records and show them to counsel and then we'll proceed.

(Said records handed to Mr. McCaffrey by the witness.)

(Several documents from said file handed to Mr. LaRossa by Mr. McCaffrey.)

(Pause)

(Said documents returned to Mr. McCaffrey.)

1  
2 MR. MC CAFFREY: I request these be marked  
3 for identification as Government's Exhibit No. 4.

4 THE CLERK: So marked. One batch of docu-  
5 ments marked for identification as Government's  
6 Exhibit 4.

7 (So marked)

8 MR. MC CAFFREY: I request No. 4 be given  
9 to this first set of documents stapled together.

10 THE CLERK: So indicated.

11 MR. MC CAFFREY: And that this be marked as  
12 No. 4-A.

13 THE CLERK: One-page document marked as  
14 Exhibit 4-A.

15 MR. MC CAFFREY: This next one be marked as  
16 Exhibit 4-B.

17 THE CLERK: 4-B for identification. One-  
18 page document.

19 MR. MC CAFFREY: And the next one be marked  
20 as 4-C.

21 THE CLERK: Exhibit 4-c for identification.

22 (So marked)

23 Q Sir, I refer you to documents from the file  
24 of your firm marked 4, 4A, 4B, 4C for identification (handing  
25 to the witness). Can you say, please, what document 4A is.



Young-direct

A Document 4A is a judgment entered on September 23, 1965, in the matter of Beachaven Management Corp. against Nicholas Bianco, Civil Court, Kings County.

Q What was the amount of that judgment?

MR. LA ROSSA: I object.

THE COURT: Are you going to offer it into evidence?

MR. MC CAFFREY: At this time I offer into evidence 4A, previously marked for identification.

MR. LA ROSSA: Might I--

MR. MC CAFFREY: You already looked at it.

THE COURT: You may ask on voir dire.

VOIR DIRE EXAMINATION

BY MR. LA ROSSA:

Q Mr. Young, is this document marked Exhibit 4A the original?

A No, this cannot be the original. The original is filed with the Civil Court of Kings County. This is a conformed copy of the same.

Q Did you conform it?

A Did I conform it? No, I did not.

Q What indicates to you it was conformed?

A The stamp of the court and the stamp of the Clerk of the Court, the stamp of September 23, 1965, and

Young-direct

and my course of practice as a litigator is a stamp of the court and the signature of the Clerk, John B. MacKinney, of Kings County, as the Clerk at that point.

Q Do you know as you are sitting there now whether that particular document is on file in the Civil Court of the City of New York?

A I do not know.

Q Do you know whether that document was ever served on the defendant, of your own knowledge?

A I do not know if this document was served on the defendant. There is no necessity of ever filing--

Q I didn't ask you that, Mr. Young. I ask you if you know.

A I don't know.

MR. LA ROSSA: I object to the introduction of what's been marked Exhibit 4A for identification.

THE COURT: Let me see it.

(Said document handed to the Court by Mr. La Rossa.)

THE COURT: Step up, gentlemen.

(The following occurred at side bar.)

THE COURT: What is your basis for your objection? Do you want him to go next door to get it certified?



Young-direct

1  
2 MR. LA ROSSA: I want to get to side bar for  
3 this reason: I examined the records. I don't  
4 believe any should be admitted into evidence, not  
5 based on the fact they're not properly authenticated.  
6 I was looking for side bar to explain the reason.  
7 The fact that a judgment for \$400 was entered  
8 against Mr. Bianco in 1965 and I have gone through  
9 their file with no proof-- I'm sorry -- no proof  
10 he was ever brought down for any supplementary  
11 proceedings, ever informed of the judgment, can  
12 not be used as a predicate to net worth. It cannot  
13 be used by the Government to establish the man had  
14 no assets in 1965.

15 THE COURT: The judgment itself recites the  
16 summons and complaint were served on him, apparently  
17 defaulted. There was an inquest. So I would take  
18 it for whatever it's worth. It may not have a great  
19 deal of weight as you suggest, but people don't let  
20 inquests, default judgment to be taken against them  
21 under normal circumstances. It's some evidence.  
22 If you want it certified--

23 MR. LA ROSSA: No problem with the certifi-  
24 cation. It's not evidence and I want the record  
25 to be clear he had no assets.

1 Young-direct

2 THE COURT: I disagree.

3 (The following occurred in open court.)

4 THE COURT: It will be received.

5 THE CLERK: Government's Exhibit 4A for  
6 identification received in evidence.

7 (So marked)

8 Q I show you Government's Exhibit 4, marked  
9 for identification, Mr. Young, and ask you to look at that  
10 and tell us what the top sheet is.

11 A The top sheet is a restraining notice to  
12 garnishee enforcement of money judgment in the matter of  
13 Beach Haven Management Corporation against Nicholas Bianco.

14 Q Was that sent out by your firm, Mr. Young?

15 A No, it was not.

16 Q Is it part of your file?

17 A Yes, it is.

18 Q Sir, I refer you to the other sheets under-  
19 neath the top sheet, which are also a part of Exhibit No. 4.  
20 Will you tell us what they are, please.

21 A This is a restraining notice to garnishee  
22 sent out by the office of Samuel S. Sezzen.

23 There is an application for an apartment  
24 filed by Nicholas Bianco on a form which is supplied by  
25 Beach Haven Management Corp., who is our client.



Young-direct

THE COURT: I disagree.

(The following occurred in open court.)

THE COURT: It will be received.

THE CLERK: Government's Exhibit 4A for  
identification received in evidence.

(So marked)

Q I show you Government's Exhibit 4, marked  
for identification, Mr. Young, and ask you to look at that  
and tell us what the top sheet is.

A The top sheet is a restraining notice to  
garnishee enforcement of money judgment in the matter of  
Beach Haven Management Corporation against Nicholas Bianco.

Q Was that sent out by your firm, Mr. Young?

A No, it was not.

Q Is it part of your file?

A Yes, it is.

Q Sir, I refer you to the other sheets under-  
neath the top sheet, which are also a part of Exhibit No. 4.  
Will you tell us what they are, please.

A This is a restraining notice to garnishee  
sent out by the office of Samuel S. Sezen.

There is an application for an apartment  
filed by Nicholas Bianco on a form which is supplied by  
Beach Haven Management Corp., who is our client.

Young-direct

There is a lease made between Beach Haven Management Corp. and Nicholas Bianco dated May 3rd, 1960.

There is a claim sheet sent by Beach Haven Management Corp. to our office relative to a breach of lease claim of Nicholas Bianco. This is Claim No. 1722 of Beach Haven Management Corp.

There is a letter from Beach Haven Management Corp. to Nicholas Bianco dated August 30th, 1961--

THE COURT: That's enough.

A There is a judgment, Beach Haven Management Corp. against Nicholas Bianco.

Q Is that a copy of that introduced in evidence as Government's Exhibit 4A?

A It is a copy, but there is no stamp of the Clerk nor a stamp of the date that the judgment was entered.

Q On the photocopy.

A On the photocopy, that's correct, nor is there a change in the amount of the judgment. There are several corrections on the judgment that was entered versus the judgment that is in this file (indicating).

MR MC CAFFREY: Your Honor, I offer so much of Government's Exhibit 4 in evidence as comprises the copy of the restraining notice to which the witness referred, the application for the apartment



Young-direct

and the copy of the lease for the apartment. I offer that portion of Exhibit 4 in evidence.

MR. LA ROSSA: Objection, hardly on the grounds of relevancy may it please the Court.

I ask your Honor to check the letter and the lease.

THE COURT: Let me look at it.

(Said document handed to the Court by Mr. McCaffrey.)

THE COURT: Let me see No. 4, Mr. Young.

(Exhibit No. 4 handed to the Court by the witness.)

THE COURT: You're not asserting the best evidence rule.

MR. LA ROSSA: No, I'm not.

THE COURT: I'll allow it.

THE CLERK: Government's Exhibit 4 received in evidence.

THE COURT: Which consists of the restraining notice to garnishee, the application for the apartment and the copy of the lease, but not the correspondence which is not being offered, as I understand it.

THE CLERK: So marked.

Young-direct

(So marked)

MR. MC CAFFREY: May the record indicate that I'm detaching the last two sheets.

THE COURT: Very well.

MR. MC CAFFREY: And request these two sheets be marked as Government's Exhibit 4D for identification.

THE CLERK: 4D for identification. So marked.

Q Referring to Government's Exhibit 4A in evidence, Mr. Young (handing to the witness), will you tell us, please, the items on the judgment that are changed.

A The interest is changed from \$90.34 to \$82. The costs by statute are changed from \$12.15-- Excuse me, \$12.50 to \$15. The total awarded is changed from \$418.84 to \$410.50. The final total is changed from \$442.30 to \$436.40.

Q Do you know who made those changes, Mr. Young?

A These changes were made by the Clerk of the Court.

Q Is that the usual practice in the Civil Court when costs are taxed?

A Yes, it is.

Q In connection with a judgment?



Young-direct

1  
2 A Yes.

3 THE COURT: What is the date of that judgment,  
4 Mr. Young?

5 THE WITNESS: The judgment is dated September  
6 23, 1965.

7 MR. MC CAFFREY: At this time I also offer  
8 in evidence Government Exhibit 4B for identifi-  
9 cation, which is a copy of the restraining notice.

10 THE COURT: Don't we have that in as 4A?  
11 I'm sorry, I mean in 4. It's the first one.

12 MR. McCAFFREY: All right, we have it in.

13 THE COURT: Exhibit 4.

14 MR. MC CAFFREY: I will withdraw that, your  
15 Honor.

16 Q I refer you to Government Exhibit 4C for  
17 identification, Mr. Young, and ask you to tell us, please,  
18 what that is (handing to the witness).

19 A This is a letter written on August 27th,  
20 1973, by Miss-

21 THE COURT: Wait a minute. To whom? That's  
22 all.

23 THE WITNESS: To Beach Haven Management  
24 Corp.

25 Q Is it part of this file?

Young-direct

A Yes, it is.

Q To whom does it pertain?

MR. LA ROSSA: Objection. I object to anything further.

THE COURT: Let me see the letter.

MR. MC CAFFREY: At this time I offer it in evidence.

(Said document handed to the Court by Mr. McCaffrey.)

THE COURT: I'll sustain the objection to the letter and its contents. I will not preclude you from asking him what steps, if any, he took to accomplish the statement contained in the second sentence, if any.

Q Will you tell us, Mr. Young, what was done with respect to this judgment that was obtained against Nicholas L. Bianco.

A After the judgment was obtained, it was sent to Samuel Sezen for attempt collection. Samuel Sezen is our corresponding attorney. When we have judgments and we cannot locate individuals, our custom and practice is to send the judgments to Mr. Sezen to locate and effectuate collection.

Q Does your file reflect when this was sent to



Young-direct

Mr. Sezen?

A There is no notation as to the date. I could surmise by our custom and practice.

Q Can you give us an approximate date?

MR. LA ROSSA: I object to any surmise.

THE COURT: You do things in the ordinary course of business, the usual way?

THE WITNESS: Yes.

THE COURT: On each one of these types of cases?

THE WITNESS: Yes.

THE COURT: Is there an outside limit beyond which--of time, in which you would normally forward something to Mr. Sezen for collection?

THE WITNESS: Yes.

THE COURT: You may so testify to that.

A Our normal course of business in the office is if we obtain a judgment, within six months of the judgment, the judgment would be forwarded to Mr. Sezen for collection, so the judgment here was obtained in September of 1965, so it would be my estimation that this matter was forwarded to Mr. Sezen prior to March of 1966.

Q How long, sir, did the file remain with Mr. Sezen?

Young-direct

A My next notation on the inside of the file reflects that on July 7th, 1970, that an attempt was made--

MR. LA ROSSA: I object to that.

THE COURT: Is this made by you?

THE WITNESS: Yes, made by myself.

THE COURT: All right.

A --to locate Mr. Bianco. So I would say that it had to be returned by July 1st, 1970, if not prior thereto.

Q Were you successful in your efforts to locate Mr. Bianco at that time, Mr. Young?

A My notes show that he had--

MR. LA ROSSA: I object to what his notes show.

THE COURT: You can refresh your recollection, as you know, Counsel, from your notes, but you may not state what your notes show. Do you have any recollection, having refreshed your recollection as to what you did or attempted to do with respect to locating Mr. Bianco?

THE WITNESS: (No response.)

THE COURT: Let's put it this way: Did you attempt to locate him?

THE WITNESS: Yes, I did attempt to locate him.



Young-direct

THE COURT: Were you successful?

THE WITNESS: I actually can't answer that with a yes or no answer. I have my notes showing that--

THE COURT: Don't say what your notes show. Your notes don't refresh your recollection as to whether you were successful or not?

THE WITNESS: He was located at 483 Ocean Parkway, Brooklyn.

Q Did your firm ever collect anything on this judgment, Mr. Young?

MR. LA ROSSA: Objection to the form of the question.

THE COURT: No, did you attempt to make a collection on the judgment, your firm, after you got the file back from Mr. Sezen?

MR. LA ROSSA: Might I most respectfully object to the form of that question.

THE COURT: Yes. Did you attempt, after you got the file back in 1970(sic)?

THE WITNESS: No.

MR. MC CAFFREY: Excuse me, sir, just a minute.

(Pause)

THE COURT: Does your file ever indicate

Young-direct

whether the judgment was satisfied?

THE WITNESS: The judgment was not satisfied.

Q What was the reason for your not taking any further effort for collection?

MR. LA ROSSA: Objection.

THE COURT: Do you know yourself what the reason was?

THE WITNESS: Yes.

THE COURT: Was it a reason made by you?

THE WITNESS: Yes.

THE COURT: Step up for a minute, gentlemen.

(The following occurred at side bar.)

MR. LA ROSSA: The reason will reflect on the letter--

THE COURT: That isn't the reason I'm going to ask. Was it because he was under federal indictment? If it is, you may have a motion for a mistrial.

MR. MC CAFFREY: I'm wary of that. I don't want to provoke that at all.

THE COURT: If it is something else, I might allow it.

MR. MC CAFFREY: The trouble with the thing hanging there looks as if he didn't make any effort



Young-direct

to collect.

MR. LA ROSSA: He didn't.

THE COURT: He didn't, but the reason that he didn't was maybe because--

MR. LA ROSSA: That's the reason as of the interview date.

MR. MC CAFFREY: We'll recess and we'll take it out of the hearing of the jury. That's the only safe way.

(The following occurred in open court.)

THE COURT: We'll have to take a five-minute recess. We'll consider it our morning recess.

Don't discuss the case during the recess. We'll be with you shortly.

(The jury leaves the courtroom.)

THE COURT: Mr. Young, what was the reason?

THE WITNESS: The reason is basically law office economics. A judgment was for the sum of \$436. We handle a large volume of claims from Beach Haven and other Trump buildings. We have larger judgments which we attempt to effectuate the collection of rather than a smaller judgment, because the costs are the same. Since this judgment, I believe, was docketed back in 1965, we decided that we should

1 Young-direct

2 not send any executions to the Sheriff to attempt  
3 to collect.

4 MR. LA ROSSA: I repeat my objection.  
5 I don't think it has any validity to the issue before  
6 the Court, what they determined.

7 THE COURT: I agree. I won't let him recite  
8 that. That has nothing to do with the situation.  
9 Do you want to ask him anything further?

10 MR. MC CAFFREY: I will withdraw that  
11 objection.

12 MR. LA ROSSA: Might we have a recess when  
13 the jury is having any?

14 THE COURT: Do you want to ask him anything  
15 before the recess?

16 MR. LA ROSSA: No.

17 THE COURT: Go ahead.

18 (Recess)

19 (The jury enters the jury box.)

20 MR. LA ROSSA: Are you finished?

21 MR. MC CAFFREY: Yes.

22 CROSS EXAMINATION

23 BY MR. LA ROSSA:

24 Q Mr. Young, according to the time that any  
25 action was begun on behalf of Beach Haven, is it your



Young-direct

not send any executions to the Sheriff to attempt to collect.

MR. LA ROSSA: I repeat my objection. I don't think it has any validity to the issue before the Court, what they determined.

THE COURT: I agree. I won't let him recite that. That has nothing to do with the situation. Do you want to ask him anything further?

MR. MC CAFFREY: I will withdraw that objection.

MR. LA ROSSA: Might we have a recess when the jury is having any?

THE COURT: Do you want to ask him anything before the recess?

MR. LA ROSSA: No.

THE COURT: Go ahead.

(Recess)

(The jury enters the jury box.)

MR. LA ROSSA: Are you finished?

MR. MC CAFFREY: Yes.

CROSS EXAMINATION

BY MR. LA ROSSA:

Q Mr. Young, according to the time that any action was begun on behalf of Beach Haven, is it your

Young-cross

normal practice to send a claim letter out?

A Yes.

Q Will you tell the jury what a claim letter is?

A A claim letter is a letter stating that we represent Beach Haven Apartments and that you have breached your lease and the damages are as follows.

Q By the way, in this particular instance, Mr. Bianco moved out of the apartment and that was the cause of the conflict, isn't that right?

A That is correct.

Q Did you in this case prepare a claim letter and send it to Mr. Bianco?

A Yes, a claim letter was prepared by our office and sent to Mr. Bianco at 2611 West Second Street, Brooklyn, New York, and by certified mail.

Q Do you have that letter?

A Yes, I do.

Q Did you just open that letter a few moments ago?

A Yes, I did.

Q Was it ever received by Mr. Bianco?

A No, it was not.

Q Was it returned to you, the sender?

A Yes.



Young-cross

Q There came a time, Mr. Young, when your office decided to serve a summons and complaint on Mr. Bianco and initiate this action; is that correct?

A That is correct.

Q Was that done in this case?

A Yes, it was.

Q Was it personally served upon Mr. Bianco?

A No, it was not.

Q Will you tell us how it was served, if you know?

A I have in my possession the affidavit of service of the process server, Morris Krinsky, on June 15th, 1953, pursuant to Section 3083 of the CPLR, a summons was served on the defendant by leaving a copy at the residence and by mailing to the address of 7 President Street.

Q Do you know, sir, whether or not Mr. Bianco received a copy of that summons?

A There is no way I could know whether he did or did not.

Q Let me-- Might I have the letter you just opened a moment ago.

A (Handing to Mr. LaRossa.)

MR. LA ROSSA: Might this be marked, please.

THE COURT: Mark it.

Young-cross

THE CLERK: One envelope with contents--

THE COURT: Are you marking the envelope  
or the letter or both?

MR. LA ROSSA: Interested in the envelope.  
Suppose I remove this (indicating).

THE CLERK: One envelope marked for identification as Defendant's Exhibit B.

(So marked)

Q Am I correct in assuming, Mr. Young, that  
you received this address in some manner indicating to you  
that Mr. Bianco lived at the address at the time that you  
mailed that letter?

A No, this letter was sent to the apartment  
house where he breached his lease. The normal course of  
business that we have is to send a letter to the apartment  
house and if there is a forwarding address, it would be  
reflected on the letter and placed on the back, on the  
certified mailing, this pink slip (indicating).

Q You knew just a few days after you mailed it  
that he never received notice of that?

A That's correct.

Q After mailing that summons and complaint to  
the door of 77 President Street, was a judgment entered  
thereafter?



Young-cross

A Yes, a judgment was entered.

Q Mr. Bianco did not appear in court, did he?

A No, he did not.

Q Is this the judgment--

MR. LA ROSSA: Might I have the exhibits,  
Mr. McCaffrey?

(Said exhibits handed to Mr. LaRossa.)

A I have a judgment up here (indicating).

Q I'm sorry. Is that the judgment we're  
referring to?

A Yes, it is.

Q Will you tell me, sir, how long after that  
letter was mailed did you appear in court and obtain this  
judgment (indicating) against Mr. Bianco for \$400-some-odd?

A Approximately four years. The letter was  
mailed on October 6th, 1961. The judgment was obtained  
on September 23, 1965.

Q Will you tell the jury how long it was after  
mailing this letter that Mr. Bianco never received until  
the summons was nailed to the door at 77 President Street?

A The summons was served on June 15th, 1964.  
The letter was mailed October 6, 1961.

Q A little short of three years; is that correct,  
a few months short of three years?

Young-cross

1  
2 A Yes, that's correct.

3 Q Did you mail a copy of that judgment or serve  
4 it on Mr. Bianco?

5 A No.

6 Q When you found out that Mr. Bianco resided on  
7 Ocean Parkway did you mail him a copy of the judgment in-  
8 forming him that a judgment had been entered against him?

9 A No.

10 Q After a judgment is entered against someone  
11 is there a procedure called supplementary proceedings?

12 A Yes.

13 Q The supplementary proceedings give you, the  
14 attorney, for the judgment creditor, the right to bring  
15 Mr. Bianco or any judgment defendant before you and be  
16 sworn under oath?

17 A That's correct.

18 Q And may you at that time ask him questions  
19 about assets?

20 A Yes.

21 Q Would you at that time inform him of the  
22 judgment?

23 A Yes.

24 Q Did you ever do that, Mr. Young, in this  
25 case once you found out Mr. Bianco lived on Ocean Parkway?



Young-cross

A No.

Q Do you know that Mr. Bianco purchased a Buick a few months after that judgment was entered?

A No.

Q Do you know that Mr. Bianco purchased a Buick in 1967?

A No.

Q Did you determine how much rent Mr. Bianco paid at Ocean Parkway when you determined he resided there?

THE COURT: I should caution the jury that the fact that Mr. LaRossa just made those two questions into a semi assertion of fact, doesn't prove anything, whether Mr. Bianco did or did not make a purchase, you will determine from evidence on the witness stand, not any suggestion made by Mr. LaRossa.

Go ahead.

A Could you repeat that question, please?

Q Did you make a determination on how much rent Mr. Bianco was paying at Ocean Parkway?

A I could make a determination right now. I never previous to this day made a determination of the exact amount per year that he paid as rent.

Young-cross

Q I'm not talking about Beach Haven now. I'm talking about once you made a determination that he lived on Ocean Parkway.

A No.

Q Did you find out how much he paid rent?

A No.

Q Did you find out whether he owned the premises?

A No.

Q Or was he a tenant?

A No.

MR. LA ROSSA: I have nothing further.

REDIRECT EXAMINATION

BY MR. MC CAFFREY:

Q Mr. Young, did you know Nicholas Bianco's address in 1966?

A This file was with Mr. Sezzen in 1966. The address that I have--

MR. LA ROSSA: I object to this. The question was asked does he know.

THE COURT: Do you know?

THE WITNESS: No.

Q What address do you have in the file?

MR. LA ROSSA: Objection.

THE COURT: What was the last address you



Young-redirect

have before you turned the file over to Mr. Sezen?

THE WITNESS: I had no address before the file was turned over to Mr. Sezen.

Q Did you have an address for the year 1967, Mr. Young?

A I don't know. I don't know if the address reflected on the outside of the file written in Samuel Sezen's handwriting is the address for 1967.

Q What address is shown there for 1967?

MR. LA ROSSA: Objection.

THE COURT: I'll sustain it.

Q What information do you have as to Bianco's address for the year 1967?

MR. LA ROSSA: Objection.

THE COURT: Same ruling.

Q When did you first become aware Mr. Bianco was living at 483 Ocean Parkway?

A From an article in a newspaper sent to us by our client.

MR. LA ROSSA: Objection. I move for withdrawal of a juror.

THE COURT: Disregard the answer. The question was when, as I recall.

MR. MC CAFFREY: Right.

Young-redirect

1  
2 THE COURT: Not from whence. Disregard the  
3 answer. Motion for withdrawal is denied.

4 A June, 1970.

5 Q Was there any change in the address informa-  
6 tion between that time, between the time that file was  
7 opened and June of 1970?

8 A Yes.

9 Q When was that change indicated?

10 MR. LA ROSSA: Objection.

11 THE COURT: Read back the last two questions.

12 (Record read.)

13 THE COURT: I'll sustain it unless you lay  
14 a foundation. From what I understand this witness  
15 doesn't know of his own knowledge or anything that  
16 went on in his office from the date he sent the file  
17 to Mr. Sezen and the date it came back. He picked  
18 up the address in June of 1970.

19 MR. MC CAFFREY: I'm simply trying to  
20 determine, your Honor, what information concerning  
21 the address--

22 THE COURT: The first new address-- The  
23 first date you obtained a new address was in June  
24 of 1970, isn't that correct?

25 THE WITNESS: Yes.



Young-redirect

THE COURT: You can ask him as to what address he obtained at that point, what changes after that, but not prior thereto.

Q What was the address that you obtained in June 1970?

A 483 Ocean Parkway, Brooklyn.

THE COURT: I should caution you, ladies and gentlemen, from time to time attorneys may make statements, as was just done on cross-examination, and if you don't get a confirming answer from the witness stand, you may not assume any assertion contained in an attorney's question is correct. You must get a confirming answer. If it's a negative answer, you must assume the answer is no until you get a confirming answer or some exhibit that confirms that assertion.

Similarly, when I say "Strike out the answer," you must entirely disregard it, the answer that came out about the newspaper article must be entirely disregarded by you. It's irrelevant to this case.

Go ahead, Mr. McCaffrey.

Q What was your reason for not conducting supplementary proceedings with respect to Mr. Bianco after the 483 Ocean Avenue address--

Young-redirect

1  
2 MR. LA ROSSA: Might we go to side bar?

3 THE COURT: You opened the door.

4 MR. LA ROSSA: You ought to find out what the  
5 answers should be, your Honor.

6 THE COURT: I think we have.

7 MR. LA ROSSA: You'll note my objection?

8 THE COURT: I assume it's going to be the  
9 same answer.

10 MR. LA ROSSA: I don't know.

11 THE COURT: Is it the same answer?

12 THE WITNESS: (Indicating)

13 THE COURT: I'll allow it. You opened the  
14 door.

15 MR. LA ROSSA: I suggest your Honor is wrong  
16 and what it's going to be--

17 THE COURT: It's the same answer as that.  
18 Don't nod your head. Put it on the record.

19 I'll allow it.

20 THE WITNESS: The office does not conduct  
21 supplementary proceedings because of the expense  
22 and time involved. We have our cases from Beach  
23 Haven and Trump and other buildings and it would  
24 not be expedient for our office to do so.

25 Q Did your office, Mr. Young, retain the services



Young-redirect

of a regular process server during the years 1965 to 1966?

A We did use a regular process server.

Q Did you use Mr. Krinsky on a regular basis?

A Mr. Krinsky would have been an employee of the process server that we used, not necessarily the process server.

Q Did you use that process server of whom Mr. Krinsky was the employee on a regular basis during that period?

A I was not employed by the office at that time, but again, going on the custom and usage of the office, I would say yes.

MR. LA ROSSA: Now I move to strike those last answers to those questions.

THE COURT: No, I think it's permissible under the rules. I'll allow it.

Q Did the firm continue the services of that process server after the service of the papers in connection with the Bianco proceedings?

A I really can't accurately answer that question because I'm not certain when we started to use the services of the process servers we use now.

Q Do you know-- Did there come a time when his services were terminated?

Young-redirect

1  
2 A Yes, we are using a different process server  
3 at this time.

4 Q When were the services of the process served  
5 by Mr. Krinsky terminated?

6 A 1967, '68, somewhere in that vicinity.  
7 I really can't pinpoint it.

8 Q To what address was the claim later sent  
9 which you referred to on cross-examination?

10 THE COURT: That's on the exhibit.

11 A The claim letter would have been sent to  
12 2611 West Second Street, Brooklyn, New York, which is the  
13 apartment where Mr. Bianco resided at Beach Haven.

14 MR. MC CAFFERY: I have no further questions.

15 RECROSS EXAMINATION

16 BY MR. LA ROSSA:

17 Q Mr. Young, what was the name of that process  
18 server that Mr. Krinsky was employed by?

19 A I'm not certain. I wasn't in the office at  
20 the time, but, again, custom and usage, I believe it was  
21 Atlas Process or Atlas Judicial Process Servers.

22 Q You tell us that you terminated their services  
23 sometime in '67 or '68; is that right?

24 A I believe somewhere there.

25 Q Is that because of the fact that many of the



Young-recross

1 affidavits of service they gave you could not be sustained  
2 by you?

3 A No.

4 Q Did you get rid of them because you didn't  
5 like them?

6 A No.

7 Q Did you find many instances where Atlas  
8 Judicial Service swore on an affidavit that they served  
9 someone and people came in and claimed they weren't served?

10 A No.

11 Q Never had one?

12 A I started to work for Lindenbaum & Young in  
13 1969, and I never had an occasion where I had an Atlas  
14 summons to deal with.

15 Q So, Mr. Young, it's true, then, that you  
16 were not employed by the firm at the time that they were  
17 terminated; is that right?

18 A That is correct.

19 Q But haven't you been told by other members of  
20 the firm that that's the reason they were terminated?

21 A No.

22 Q Have you ever found out why they were termin-  
23 ated?

24 A No.

1  
2 Q So you don't know Mr. Krinsky nor know anything  
3 about Atlas Service?

4 A No.

5 Q The only thing you know your law firm terminat-  
6 ed their services sometime in '67 or '68?

7 A I believe so, yes.

8 Q Do you know why they terminated their ser-  
9 vices?

10 A No.

11 Q Do you know whether they are still in  
12 existence today?

13 A No.

14 Q Do you know whether they were dissatisfied  
15 with that process server?

16 MR. MC CAFFEY: Objection. Asked and  
17 answered.

18 THE COURT: Furthermore, there is, as you  
19 know, Mr. LaRossa, as far as legal question is  
20 concerned, there is substituted service allowed  
21 under the rules.

22 MR. LA ROSSA: If it was done, your Honor.

23 THE COURT: That's what the affidavit says.

24 MR. LA ROSSA: I have nothing further.

25 MR. MC CAFFEY: I have no further questions.



Sezzen-direct

THE COURT: You may step down, Mr. Young.

(Witness excused)

MR. MC CAFFREY: Mr. Sezzen, please.

MR. LA ROSSA: Might I see the file for a moment?

(Said file as indicated handed to Mr. LaRossa by Mr. McCaffrey.)

S A M U E L        S .        S E Z Z E N,    called as a witness,  
having been duly sworn by the Clerk of the Court,  
testified as follows:

THE CLERK: Full name, please, and spell  
your last name for the record.

THE WITNESS: Samuel S. Sezzen, S-e-z-z-e-n.

DIRECT EXAMINATION

BY MR. MC CAFFREY:

Q        Mr. Sezzen, what is your profession or occupation?

A        I'm an attorney at law.

Q        Are you a member of the New York bar?

A        Yes, sir.

Q        How long have you been practicing law in  
New York?

A        December of 1936.

Sezzen-direct

Q Up to the present time?

A Up to the present time.

Q Do you maintain an office in connection with your practice?

A Yes, sir.

Q Where is that office located, sir?

A 299 Broadway, Manhattan.

Q Do you specialize in any particular type of legal work?

A Commercial law, collections.

Q For how long a period of time have you specialized in collection work?

A For the last--since '36.

Q Are you acquainted with the law firm of Lindenbaum & Young, in Brooklyn, New York?

A Yes.

Q Have you had any professional dealings with that firm?

A I did their of-counsel work.

Q When you say you do of-counsel work for Lindenbaum & Young, Mr. Sezzen, what type of counsel work do you perform for them?

A Well, they referred some of their collection matters to me, and in the event they are unable



Sezzen-direct

to do their own collecting.

Q Sir, I show you Government's Exhibit No. 4A (handing to the witness) in evidence, a judgment against Nicholas B. Bianco, and ask you to examine that document, please.

(Pause)

A Yes?

Q Did you at any time have that document, that judgment, copy of the judgment, in your possession?

A Yes, this was part of a file referred to me.

Q Where did that file come from, sir?

A From Lindenbaum & Young.

Q What was the purpose for which you received that file?

A For me to attempt collection.

Q Was that judgment part of the file when you received it? I refer you to Government's Exhibit No. 4B in evidence, restraining notice to garnishee. I ask you to look at that, please (handing to the witness.)

Can you tell us who prepared that restraining notice?

A My office prepared that.

Q Do you know what was done with that restraining notice?

Sezzen-direct

1  
2 A Well, a copy was served on Chemical Bank, New  
3 York Trust Company.

4 Q What was the address of that bank, sir?

5 A 17 Hamilton Avenue, Brooklyn.

6 Q What is the purpose of a restraining notice,  
7 Mr. Sezzen?

8 A The purpose is to attach any funds that might  
9 be maintained in a judgment debtor's account.

10 Q Was any attachment of funds made in connection  
11 with the service of this restraining notice?

12 A No.

13 Q Were you able to find any funds of Nicholas  
14 Bianco?

15 A No, sir--

16 MR. LA ROSSA: Object to the form of the  
17 question.

18 THE COURT: Did you make any attempt beyond  
19 the restraining notice?

20 THE WITNESS: Yes.

21 THE COURT: I'll allow it.

22 Q The question was, Did you find any funds at  
23 the Chemical Bank?

24 A No, sir.

25 Q In connection with this restraining notice?



Sezzen-direct

A (No response).

Q When was it-- When was the restraining notice sent out, Mr. Sezzen?

A Well, it was dated January 21 of '66. I presume it was on that date.

Q Sir, what other steps did you take in connection with collection on this judgment?

A Well, I can't very well say what steps I took in this action because during the years I have handled thousands of files, and I can't just pinpoint what I did in this particular case, but my general procedure would be--

MR. LA ROSSA: Objection to this.

THE COURT: Can you tell from looking at the file itself, can you refresh your recollection?

THE WITNESS: No, the file wouldn't indicate.

THE COURT: Do you know whether you followed a specific general procedure in this particular case?

THE WITNESS: Yes, I would presume so, yes.

THE COURT: Do you have an established procedure you follow on every case?

THE WITNESS: Most every case.

THE COURT: You say, "most every case."

THE WITNESS: Every case is not the same, of course, it all depends on the nature of the action.

Sezzen-direct

THE COURT: My question is, Do you know if you followed the established procedure in this case?

THE WITNESS: Yes, I would say so.

THE COURT: I'll allow it.

Q What is the procedure that you follow, sir, in such cases?

A We check out references submitted by the tenants. We check out his bank references, if any. We also issue information subpoenas to current landlords or anybody who might be associated with the judgment debtor.

Q I show you a file and ask you to look at that. Have you seen that previously?

A Yes.

Q What is it, please (handing to witness)?

A Yes, I have had this file before.

Q Did you open that file?

A No, no.

Q What was the source of that file?

A The source was Lindenbaum & Young's office.

Q When you received that file from Lindenbaum & Young, Mr. Sezzen, did that file contain certain papers in it?

A Yes.

Q Will you tell us, please, which papers the



Sezzen-direct

file contained when you received it.

MR. LA ROSSA: Are all papers in the file?

Q Examine these also, Mr. Sezzen (handing to the witness) (indicating).

THE COURT: Maybe it ought to be done the other way. Were all the papers except the restraining notice in the file when you received it?

THE WITNESS: Well, there is some correspondence here that I didn't have the time--

All of the papers preparatory to judgment were contained in this file, your Honor.

THE COURT: When you received it?

THE WITNESS: When I received it, yes, also the lease and the references and correspondence by certified mail to the judgment debtor.

THE COURT: O.K.

Q Sir, what information did you have at your disposal then with respect to Nicholas Bianco when you received the file from Lindenbaum & Young?

A Well, I had all papers--

MR. LA ROSSA: Objection.

THE COURT: Sustained. I'll allow the answer, "I had all the papers to which I just referred," if that's your answer.

Sezzen-direct

THE WITNESS: Preparatory to judgment.

THE COURT: I'll allow that, some of which have already been marked in evidence.

You had, in other words, 4--Exhibit 4, which consisted of the application for the apartment, the copy of the lease, copy of the judgment?

THE WITNESS: Yes.

THE COURT: Marked Exhibit 4A (indicating).

Q Did you receive any response of any kind from Nicholas Bianco in connection with any of the procedures that you followed--

MR. LA ROSSA: Objection to the form of the question.

THE COURT: There's no foundation. Did you attempt to communicate with Mr. Bianco? You'd better ask that first.

Did you attempt to communicate with Mr. Bianco directly?

THE WITNESS: I can't very well answer that, your Honor; it's such a long time ago.

THE COURT: There's no letter addressed to him from you?

THE WITNESS: No, I might have telephoned. I don't know. I can't say for certain.



Sezzan-direct

MR. LA ROSSA: I object and move it be stricken.

THE COURT: Disregard it.

Q Do you have any recollection of any communication of any kind from Mr. Bianco?

MR. LA ROSSA: Objection to the form of the question.

MR. MC CAFFRETY: Your Honor--

THE COURT: No, I'll allow that.

MR. LA ROSSA: From Mr. Bianco.

THE COURT: To and from Mr. Bianco.

A Well, I did have a recollection of speaking with him. I don't exactly remember when it was, the circumstance.

Q Do you recall what the substance of that conversation was?

A Well, with reference to the judgment.

MR. LA ROSSA: I'm going to object to this unless a foundation be laid. I move these answers be stricken.

THE COURT: Well, no, he says he has a recollection.

MR. LA ROSSA: Might it please the Court, I think further foundation--

THE COURT: I agree with you. He has to

Sezzen-direct

1  
2 give us some idea, approximately when, whether in  
3 person, by telephone, when it was. If he does that  
4 much, I'll allow it.

5 Q When, approximately, was this, Mr. Sezzen?

6 A I couldn't very well say.

7 Q Was it during the period in which you had the  
8 file in your possession?

9 A Oh, yes.

10 Q Was this telephone call in connection with  
11 this judgment?

12 A Well, then again I can't say -- it must have  
13 been a telephone call, yes, because I had no other way of  
14 communicating with him.

15 MR. LA ROSSA: I object and move that be  
16 stricken.

17 THE COURT: Strike out the last. I'll allow  
18 "It must have been a telephone call."

19 Q Do you have a recollection of any discussion  
20 or conversation with Mr. Bianco?

21 THE COURT: Yes or no?

22 A Yes. I would say yes.

23 Q Can you tell us what the substance of this  
24 conversation was?

25 MR. LA ROSSA: Objection.



Sezzen-direct

THE COURT: You've got to ask one more question. How do you know it was Mr. Bianco to whom you were talking?

THE WITNESS: I can't very well answer that, Judge.

THE COURT: Sustain the objection.

Q Did you ever collect anything on this judgment?

A No, sir.

Q How long did you continue to keep this file in your possession?

A To July of '70.

Q What did you do with it, sir, at that time?

A I returned the file to Lindenbaum & Young.

THE COURT: Keep your voice up so the last juror can hear you.

A I returned the file to Lindenbaum & Young.

MR. MC CAFFREY: I have no further questions.

MR. LA ROSSA: Now, may it please the Court, I move to strike those answers to those questions about telephone calls and communications between the parties.

THE COURT: Yes, I will grant that motion. Disregard this witness's testimony with respect to

Sezzen-cross

any telephone conference he thought he had with  
this defendant.

CROSS EXAMINATION

BY MR. LA ROSSA:

Q Tell me, sir, I show you what's been marked  
Exhibit 4B (handing to witness), restraining notice to  
garnishee. Is that something you prepared?

A Yes.

Q What bank is it addressed to, sir?

A Chemical Bank.

Q Where did you get the information that you  
should prepare--

MR. LA ROSSA: Withdraw the question.

Q I show you now--

MR. LA ROSSA: Excuse me one moment, your Honor.

THE COURT: Surely.

(Pause)

Q I now show you what's been marked Exhibit 4  
in evidence. Does that exhibit have a copy of an applica-  
tion of an apartment?

A Beg pardon?

Q Does this exhibit have within those papers,  
sir, a copy of the application for an apartment?

A Yes.



Sezzen-cross

Q Does the application for the apartment have a bank reference?

A I'm sorry. Manufacturers Trust.

THE WITNESS: Very illegible, your Honor.  
I can't see it.

Q Let me show you what I believe is the original of that exhibit that I have received from the file. Does that help you (handing)?

A Yes.

Q What bank was given as a reference?

A Manufacturers Trust.

Q Was there an address?

A Avenue U.

Q Is that in Brooklyn?

A Yes.

Q Does your notice of garnishee address to the Manufacturers Trust Company?

A It was not.

Q Has it ever been addressed to the Manufacturers Hanover Trust Company?

A That I don't know.

Q Do you have a letter addressed to the Manufacturers Hanover Trust Company?

A That I don't know.

Sezzen-cross

1  
2 Q You have examined the file, sir?

3 A That file does not contain all of the papers  
4 that I handled. There were some other proceedings which  
5 I kept in my file, which was destroyed after the file was  
6 returned.

7 Q But you certainly didn't destroy any legal  
8 papers, did you?

9 A Well, yes, legal papers, sir, of course.

10 Q Did you retain this notice of garnishee  
11 which is marked Exhibit 4B?

12 A No, I did not.

13 Q Where did that come from, do you know?

14 A It was in the file.

15 Q In other words, you returned it to Mr. Lin-  
16 denbaum's office when you returned the file?

17 A Yes.

18 Q Were there any additional notices to garnishee?

19 A I really wouldn't know.

20 Q You have no idea?

21 A I don't remember.

22 Q Do you have any copies of correspondence  
23 addressed to Mr. Bianco?

24 A No, I don't have any copies.

25 Q Do you have any copies of correspondence



Sezzen-cross

to any other banks?

A No, sir.

Q What was the date you returned this file to  
Lindenbaum & Young?

A July 1st of '70.

Q I'm sorry?

A July 1st of 1970.

MR. LA ROSSA: I have no further questions.

REDIRECT EXAMINATION

BY MR. MC CAFFREY:

Q When was your file destroyed, Mr. Sezzen?

A Probably a short time after I returned the  
file.

Q What was the reason for destroying your file?

A Well, I have thousands of files in the office.  
There's no room to actually keep these files after I have  
returned them. I destroy those papers that I don't need.

Q I ask you, sir, to look at the application  
for the apartment in this file (handing to the witness).

(Pause)

Q What was the date of the application?

A 1960.

Q What was the date that you received this  
file from Lindenbaum & Young?

Sezzen-redirect

A Must have been about 1966, I presume.

Q Did you make any search for assets in connection with this judgment, Mr. Sezzen?

A Well, only-- I must have made the search. I can't exactly say what I did because it's so long ago.

MR. LA ROSSA: I move to strike the answer.

THE COURT: Yes, the answer will be stricken except to the extent heretofore indicated with respect to the regular proceedings which he described.

Q Was there anything in that file that you received indicating that Bianco had an account at the Chemical Bank?

MR. LA ROSSA: Objection.

Q When you received it.

THE COURT: No, I'll allow it.

A My recollection is that it was the nearest bank to where Mr. Bianco lived at the time. I issued that subpoena based on that information.

Q Was there any information in the file that he had an account?

A No.

Q What information did you have, Mr. Sezzen, as to Bianco's address when you received this file?



Sezzen-redirect

1  
2 A Well, he was, as I recall it he was in the  
3 telephone book. I also had his address. That was on the  
4 judgment.

5 Q What address is shown on the judgment?

6 A 77 President Street.

7 Q During the period of time that you had the file  
8 did you receive any further information as to Nicholas  
9 Bianco's address?

10 A Yes, I had the telephone directory, gave me  
11 an address.

12 Q What address was that, sir?

13 A I believe it was 2611 West Second--

14 MR. LA ROSSA: I object to this.

15 THE COURT: I'll allow it. 26--

16 THE WITNESS: West Second Street.

17 Q Did you make any effort to contact Nicholas  
18 Bianco at that address?

19 A All-- Again I can't say for certain, but  
20 I would assume from my regular procedures I would have  
21 done that.

22 Q What was your reason, Mr. Sezzen, for return-  
23 ing the file to Lindenbaum & Young?

24 A Well, I found I couldn't locate any assets,  
25 and I just gave it back; as is my custom.

Sezzen-recross

MR. MC CAFFERY: No further questions.

CROSS EXAMINATION

BY MR. LA ROSSA:

Q The only thing you really did was serve a notice to a bank that you made a determination was the closest bank to Mr. Bianco's house; is that right?

A That's not so, no.

Q Do you have any other notices that you can show us, sir, you served on any other banks?

A No.

Q Any other places?

A No.

Q Do you have a copy of any letter written to anyone with respect to Mr. Bianco?

A No.

Q Do you have any other legal papers other than the notice we just discussed?

A No, sir.

MR. LA ROSSA: Nothing further.

REDIRECT EXAMINATION

BY MR. MC CAFFREY:

Q Mr. Sezzen, were any such letters prepared?

A It must have been prepared.



Sezzen-redirect

MR. LA ROSSA: I object and move it be stricken.

THE COURT: The words "must have been prepared," is stricken. The witness has heretofore testified what is general custom and practice in the office was and I'll allow that much.

Q When you returned a file to Lindenbaum & Young, Mr. Sezzen, was it your practice to include correspondence to the judgment debtor?

A No, no.

Q Where did you keep copies of such correspondence?

A Well, I kept the copies in my office for a while and I destroyed the papers.

Q How long did you keep them, sir?

A A few months thereafter.

MR. Mc CAFFREY: I have no further questions.

THE COURT: You may step down.

(Witness excused.)

Betancourt-direct

F R E D        B E T A N C O U R T,    called as a witness,  
having been duly sworn by the Clerk of the Court,  
testified as follows:

THE CLERK:    Full name, and spell your last  
name for the record.

THE WITNESS:   Fred Betancourt, B-e-t-a-n-  
c-o-u-r-t.

DIRECT EXAMINATION

BY MR. MC CAFFREY:

Q        What is your business or occupation?

A        I work for GMAC.   I'm a special collections  
manager.

Q        How long have you been working for GMAC?

A        Six years.

Q        How long have you been working at special  
collections?

A        Approximately about three, four months.

Q        What were you doing prior to the period you  
were in special collections?

A        Credit representative.

Q        Have you brought with you, Mr. Betancourt,  
certain records of GMAC in accordance with a subpoena duces  
tecum served on that company pertaining to Account No.  
31542321, the name of Nicholas L. Bianco?



Betancourt-direct

A No, I haven't.

Q Did you request these records, Mr. Betancourt,  
in compliance with the subpoena?

A Yes, we did.

Q What was the result of that request?

MR. LA ROSSA: Objection.

THE COURT: Are they in existence or not?

THE WITNESS: Not in existence.

THE COURT: Overruled.

Q What is the reason those records are no longer  
in existence, Mr. Betancourt?

A We only keep records---

MR. LA ROSSA: I haven't even seen the sub-  
poena.

THE COURT: That doesn't make any difference.  
He's entitled to ask if the records are in existence  
and produce secondary evidence. If he didn't follow  
this route, you'd object to producing secondary  
evidence.

MR. LA ROSSA: Object, but I don't know what  
he's referring to.

THE COURT: Neither do I. He is requesting  
certain evidence and made a search.

MR. LA ROSSA: Objection, your Honor.

Betancourt-direct

Q Sir, I show you photocopy of a letter on the letterhead of General Motors Acceptance Corporation and I ask you, Mr. Betancourt, if you recognize the signature on that letter.

A Yes, I do.

Q Whose signature is it, sir?

MR. LA ROSSA: Objection.

THE COURT: I'll sustain it at this time, except I'll let you identify the official capacity of whoever's signature it is. Is it an officer of the company?

THE WITNESS: At this time, no, he's not any longer. He's retired.

THE COURT: At that time when he signed it.

THE WITNESS: He was in my position at that time, special collections manager.

THE COURT: All right.

Q Is there anything on here to indicate to whom these papers pertain?

MR. LA ROSSA: Objection.

THE COURT: I will allow that, no more.

Do the papers pertain to a particular individual?

THE WITNESS: Yes.



Betancourt-direct

THE COURT: Whom do they pertain to?

THE WITNESS: Well, who the letter is made--

THE COURT: Who do the papers pertain to?

An individual, corporation?

THE WITNESS: Corporation.

THE COURT: What corporation?

THE WITNESS: General Motors.

THE COURT: The papers pertain to General Motors, or pertain to somebody that General Motors had dealings with?

THE WITNESS: This letter here is just, you know--

THE COURT: Don't tell us what the letter is. The question is, do the papers pertain to a person or a corporation?

THE WITNESS: A person.

THE COURT: What is the name of the person?

THE WITNESS: Nicholas Bianco.

MR. MC CAFFREY: I request this be marked as Government's Exhibit No. 5.

THE CLERK: Document marked for identification as Government's Exhibit No. 5.

(So marked)

THE COURT: Show them to your adversary.

Betancourt-direct

Maybe we can shorten this.

(Mr. McCaffrey complies.)

MR. LA ROSSA: I object to this and ask your Honor to look at this.

THE COURT: Very well.

(Said document handed to the Court.)

THE COURT: I will take it, subject to further testimony from this or some other witness, everything but the covering letter dated October 3, 1972.

MR. LA ROSSA: That's what I'm objecting to; the objection is to the covering letter.

THE COURT: That's not what you said.

I'll take all the other three pages except for the covering letter.

THE CLERK: Government's Exhibit 5 received in evidence as indicated.

THE COURT: You can mark the covering letter 5A.

THE CLERK: Covering letter is marked 5-A for identification.

(So marked)

MR. MC CAFFEY: Does your Honor want the covering letter detached?

THE COURT: Yes.



Betancourt-direct

(Mr. McCaffrey complies.)

Q Mr. Betancourt, are these copies, or is that a copy of the documents called for by the subpoena served upon GMAC in this case?

A Yes.

Q Do they refer to a particular account number?

A Yes, they are.

Q What is that account number?

MR. LA ROSSA: Is that Exhibit 5?

THE COURT: We're now working with Exhibit 5, not 5A, but 5.

MR. LA ROSSA: 5.

A No. 315, Account 42321.

Q Is there a name on there to whom that account number pertains?

A Yes, Nicholas L. Bianco.

Q What are these sheets which you have before you, Mr. Betancourt?

A These are what we call our branch records.

Q What kind of information is shown on those sheets?

A It tells us a breakdown of every payment that should be made on the month and date, also a rebate in case the customer pays the account off beforehand or at any time.

Betancourt-direct

Q Does this relate to payments on an automobile of some kind?

A Yes, it does.

Q Is there any description of that automobile on these sheets?

A Yes.

Q What description is there?

A A '65 Buick, two-door sport coupe.

Q These sheets, Exhibit 5, that you have before you in evidence, indicate what payments were made by Mr. Bianco to GMAC?

A No, they don't.

Q Does it indicate any other information with respect to that vehicle?

A Yes, the car had been repossessed in December, December 8, 1966.

Q Is there any indication as to the reason for the repossession of that vehicle?

A No, none.

Q What are the reasons for which GMAC repossesses the vehicles?

MR. LA ROSSA: Objection.

THE COURT: Is there a limited number of reasons?



1 Betancourt-direct

2 THE WITNESS: Yes, very little.

3 THE COURT: You can tell us what those reasons  
4 are.

5 THE WITNESS: If a car has-- I mean if the  
6 contract has gone into default, someone hasn't made  
7 the payments or doesn't want to make them or the car  
8 has been illegally converted, sometimes the customer  
9 doesn't want to pay for the car and gives the car  
10 back. That's about it.

11 MR. MC CAFFEY: I have no further questions.

12 CROSS EXAMINATION

13 BY MR. LA ROSSA:

14 Q Mr. Betancourt, did you check the records of  
15 General Motors Corporation with respect to Mr. Bianco?

16 A Before this?

17 Q Yes.

18 A No, only what I have been given.

19 Q Does that sheet tell you who he purchased the  
20 car from?

21 A Well, it has the dealer number. That tells  
22 us who it was.

23 Q Could you tell us that?

24 A Kaplan Buick.

25 Q Does that indicate whether in December of 1966

1 that car was involved in an automobile accident?

2 A No, it doesn't.

3 Q Does that sheet tell us whether or not GMAC  
4 had a collision insurance coverage on that vehicle?

5 A It had in the first, I believe, the first  
6 year.

7 Q How about in December of 1966?

8 A It's hard to say from the copy. You see,  
9 it was rebilled. In other words, they don't have it--  
10 It doesn't look like it does.

11 Q You say it was rebilled?

12 A Yes, rebilled, in other words, the account.

13 Q Or rebilled?

14 A Right, on the insurance part they have  
15 "cancelled." I don't know what date it was cancelled.

16 Q Does it indicate on those records the reason  
17 for GMAC's repossession of this car was because of that  
18 automobile accident?

19 A No.

20 THE COURT: Don't assume there was any  
21 automobile accident because he's suggesting it  
22 was by his questions, ladies and gentlemen.

23 A No, it doesn't.

24 Q Is there any indication about whether or not  
25



Betancourt-cross

Mr. Kaplan Buick sold Mr. Bianco an additional car in 1966 in or about December of '66?

A No, not on this.

Q Would any other records disclose that?

A From what I have here?

Q Yes.

A No.

Q Or any other records you have belonging to the General Motors Corporation?

A We would have to look back. I doubt it right now if I could find anything--I mean back in 1966.

Q Yes, Mr. Betancourt?

A Yes. I doubt if we can find them if there was. This is, you know, if they were looking, they would probably have found it if there was.

MR. LA ROSSA: Thank you, Mr. Betancourt.

MR. MC CAFFEY: I have no further questions, your Honor.

THE COURT: You may step down.

(Witness excused)

DOMINICK BORRELLLO, called as a witness, being duly sworn by the Clerk of the Court, testified as follows:

Borrello-direct

THE CLERK: Full name, and spell your last name for the record.

THE WITNESS: Dominick Borrello,

B-o-r-r-e-l-l-o.

DIRECT EXAMINATION

BY MR. MC CAFFREY:

Q Mr. Borrello, what is your occupation or employment?

A I work for Bankers Trust Company. I'm in the installment loan division.

Q What are your duties, sir, in the installment loan division.

A I do collection and legal work.

Q How long have you been with the installment loan division?

A Seven years.

Q Are you here today, Mr. Borrello, in accordance with a -- in compliance with a subpoena duces tecum served upon the Bankers Trust Company for collection of certain records?

A Yes.

Q Does that subpoena call for the production of all the records pertaining to bank loans by Nicholas L. Bianco, the purchase of a 1967 Buick automobile?



Borrello-direct

1

2

A Yes.

3

Q Do you have those records with you, sir?

4

A Yes, I do.

5

Q Are those the original of those records, or

6

are they--

7

A Photocopies.

8

Q --photocopies.

9

A Photocopies.

10

Q Where are the originals of those records,

11

Mr. Borrello?

12

A Unable to locate them.

13

Q Was a search made for those records?

14

A Yes, sir.

15

Q Sir, I ask you--

16

MR. MC CAFFREY: Withdraw that question.

17

Q Mr. Borello, do these records pertain to the

18

purchase of a 1967 Buick?

19

A That's right.

20

MR. MC CAFFREY: I request these be marked

21

for identification as Government's Exhibit 6.

22

THE CLERK: So marked.

23

(So marked)

24

Q To what individual, sir, do these records

25

pertain?

Borrello-direct

A Nicholas Bianco.

Q What kind of records are these, Mr. Borrello?

A This is a jacket of an installment loan file that we put up when we make a loan for an automobile to our customer.

Q Does it show the application for such loan? Is that part of those records?

A It does not show-- There is an application in here which is also a photostatic copy.

Q Does it show payments that were made on that vehicle?

A We also have a transcript of payments on this particular vehicle, yes.

MR. MC CAFFREY: At this time, your Honor, I offer in evidence Government's Exhibit No. 6 for identification (handing to Mr. LaRossa).

MR. LA ROSSA: I object to the covering sheet. I don't know whether it's being offered or not.

MR. MC CAFFREY: I'll detach the covering sheets, your Honor, as we did in the others.

MR. LA ROSSA: I have no objection to the rest of the exhibit.

THE COURT: All right. We'll mark the cover sheet 6A and the balance to be admitted.



Borrello-direct

THE CLERK: Government Exhibit received in evidence. Covering letter marked as Government's Exhibit 6A for identification.

(So marked)

Q Sir, I show you Government's Exhibit No. 6 in evidence. Does part of that exhibit consist of a contract of sale?

A A conditional sales contract for the sale of the automobile, yes.

Q What is the date of that contract, sir?

A November 25, 1966.

Q Is there an indication there as to the total cost of that automobile?

A Yes, there is.

Q What is that, sir?

A \$4,583.40.

Q Is there anything in here that indicates the amount of the loan from Bankers Trust Company?

A On the conditional sales contract? No.

Q Well, let me go--

MR. MC CAFFEY: I'll withdraw that.

Q Was there in fact a loan made by Bankers Trust Company, made with the sale?

A It was.

Borrello-direct

Q To whom was that loan made?

A To Nicholas L. Bianco.

Q What was the amount of that loan?

A The amount of the loan was \$4,583.40.

Q How was that loan to be repaid?

A Monthly, in installment basis.

Q What was the amount of those monthly installments, sir?

A Thirty-six months, \$121.90.

THE COURT: \$121.

THE WITNESS: \$120.90, thirty-six by \$120.91.

Q Do those records reflect, Mr. Borrello, payments made by the borrower, Nicholas L. Bianco in connection with that loan?

A Yes, there are payments here.

Q When do those payments start?

A First one was paid on 1/18.

THE COURT: What year?

THE WITNESS: Of '67. The loan date was, first due payment 12/26 of '66, but was paid on 1/18 of '67.

Q How many payments were made during the course of the year '67?

A 1967 there weren't any payments made--let me



Borrello-direct

see.

THE COURT: In other words--

THE WITNESS: Yes, I'm sorry, I'm looking at two different loans here now. I'm getting confused. Payments in 1967 were \$1461.01.

Q Was that the total amount of the payments that were made during 1967?

A 1967.

Q Was that \$1400--

A And \$61.01.

Q Would you repeat that amount, please.

A \$1461 and one penny.

Q Was that \$1461.01, was that paid in installments?

A Yes, it was.

Q Do those records reflect any payments made by Nicholas J. Bianco during the course of the year 1968?

A Yes.

Q Did the amount of the payments remain the same during 1968?

A They did.

Q What was the total amount of the payments reflected in these records for the year 1968?

A \$604.55.

Borrello-direct

Q Was that sum paid in installments?

A It was.

Q By Mr. Bianco?

A Right.

Q Do these records reflect when the last such installment was paid by him?

A May 1st of 1968.

Q Were any further payments of any kind made on this vehicle by Nicholas L. Bianco after that date?

A Not that this record indicates.

Q Is there anything to indicate what the disposition of this loan was?

A No, sir.

Q Was the loan repaid?

A I have no idea.

THE COURT: You can't tell from that record?

THE WITNESS: No, I can't. It just stands at a certain figure and that's it. Whether there was anything done because this was a recourse deal here and this car may have been taken back and returned to the dealer.

THE COURT: You can't tell?

THE WITNESS: I can't tell from the records, sir.



Borrello-direct

THE COURT: Strike out the "may have been."

Q Is there anything in this file to indicate that this was a sale with recourse?

A Yes, it's so stamped on the application.

Q And--

A And on the jacket.

Q All right. Now, does it state with recourse to whom?

A Well, the recourse, insofar as the bank is concerned goes back to the dealer, who happens to be Herbert Kaplan, Buick dealer.

Q Is there a loan application that comprises part of the Government's Exhibit No. 6 in evidence, Mr. Borrello?

A Yes, there is. It's the buyer's credit statement, loan application.

Q All right, sir. I ask you to examine that loan application. Is there any statement in there as to Nicholas Bianco's employment?

A Yes, there is.

Q What does it say with respect to his employment?

A He's employed by the Savena Furniture Company.

Q Does it give an address?

A 434 Utica Avenue, probably Brooklyn, I don't

Borrello-direct

know.

Q Is there any further information in connection with his employment?

A Income of \$135 per week. He was a salesman.

THE COURT: \$135 a week. That's what it says on there?

THE WITNESS: Seems to be, yes.

Q Sir, were you also required by the Government subpoena to bring with you records pertaining to a bank loan in connection with the purchase of a 1969 Buick by Nicholas L. Bianco?

A That's right.

Q Did you in fact bring those original records with you?

A These are photostatic copies.

Q What about the originals, Mr. Borrello?

A Unable to locate them.

MR. MC CAFFEY: I request this be marked as Government's Exhibit 7 for identification.

THE CLERK: So marked as Government's Exhibit 7 for identification.

(So marked)

MR. MC CAFFEY: I request the covering letter be marked as Government's Exhibit 7A.



Borrello-direct

THE CLERK: So marked, as Government Exhibit  
7A for identification.

(So marked)

Q Will you take a look at Government's Exhibit  
No. 7 for identification, Mr. Borrello (handing to the  
witness). Are those copies of records kept by Bankers  
Trust Company in the regular course of business?

A Yes.

Q To whom do they pertain, sir?

A Nicholas L. Bianco.

MR. MC CAFFREY: I offer Government's Exhibit  
No. 7 in evidence, your Honor.

(Documents handed to Mr. LaRossa.)

MR. LA ROSSA: Mr. McCaffrey will offer  
those and have them marked, it will save time during  
the lunch hour.

THE COURT: I think he wants to ask questions.  
What we might do is take the lunch hour. It will  
probably take five minutes to look at them.

I think an hour and fifteen minutes should  
enable you to get a decent lunch. I hope it does.  
Any way, don't discuss the case during that time,  
and be back at ten past two.

(Jury leaves the courtroom.)

1  
2 THE COURT: Gentlemen, as my plans presently  
3 stand now, I may well have to take Thursday afternoon  
4 on other business, which means that we'll be adjourn-  
5 ing probably from Thursday, say around 1:30 or so,  
6 until Monday morning. I thought I'd better put you  
7 on notice of this fact in case, as far as lining  
8 up witnesses is concerned.

9 MR. LA ROSSA: Thank you.

10 MR. MC CAFFREY: Thank you, Judge.

11 (Time noted: 1:00 p.m.)

12 (Luncheon recess.)  
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AFTERNOON SESSION  
(2:30 p.m.)

THE COURT: Let's bring in the jury.

MR. LA ROSSA: Might I bring something to your attention before the jury comes out?

THE COURT: All right.

MR. LA ROSSA: My objection is to this particular sheet (indicating) of Exhibit No. 7.

THE COURT: I can't read it. What's your objection?

MR. LA ROSSA: Partly because I can't read it.

THE COURT: Neither can I. Mr. McCaffrey can't either.

MR. LA ROSSA: It's a document with a back which I feel has no relation--

MR. MC CAFFEY: I have no objection to removing that.

MR. LA ROSSA: I have no objection to having it removed and no objection to the rest of the exhibit.

THE COURT: Very well.

(The jury enters the jury box.)

THE COURT: I apologize for keeping you waiting, ladies and gentlemen. There were two matters put on my calendar unbeknownst to me before

1 lunch that I had to handle. Both of them were  
2 urgent matters, and these things happen, and there's  
3 just nothing I can do about it. Please accept my  
4 apologies.

5  
6 D O M I N I C K B O R E L L O, resumed the stand and  
7 testified further as follows:

8 DIRECT EXAMINATION (CONTINUED)

9 BY MR. MC CAFFREY:

10 MR. MC CAFFREY: I request Government Exhibit  
11 No. 7 for identification be admitted into evidence.

12 MR. LA ROSSA: No objection.

13 THE COURT: To be received.

14 THE CLERK: Government Exhibit No. 7 now  
15 in evidence.

16 (So marked)

17 Q I refer you to Government's Exhibit No. 7 in  
18 evidence, Mr. Borello. Does that refer to the financing  
19 of a car by Bankers Trust Company?

20 A Yes.

21 Q Those records indicate the name of the  
22 individual who financed the purchase of that car?

23 A Nicholas L. Bianco.

24 Q Is there anything in those records constitut-  
25 ing Government's Exhibit No. 7 that indicated the make and



Dorello-direct

model of the car?

A Yes, there is. The car is a 1969 Buick.

Q Do those records indicate when that car was purchased?

A October 7, 1968.

Q Do those records indicate the purchase price of the car?

A Yes, it does. \$5,113.05.

Q Is there a record in Exhibit No. 7 of payments made by Nicholas L. Bianco in connection with that loan financing the car?

A Yes, there is.

Q Will you tell us, please, when the record of those payments begins?

A In 1968 on November 1-- November 12th, first payment was received.

Q Were there other payments then made according to these records during the course of the year 1968?

A Yes.

Q Can you tell us from these records, sir, what the total amount of payments on that car were by Nicholas L. Bianco during 1968?

A There were two payments made, November and December, \$240, total--\$120 per month, equal two hundred

Borello-direct

forty for the year.

Q Were there further payments?

A There was.

Q During the course of the year 1969?

A There was.

Q Can you tell us the number of payments that were made during the course of that year?

A Twelve payments.

Q What was the total?

A \$1320.

Q During the year 1969?

A Right.

Q Is there anything in here to indicate the conditions under which this loan was made?

A The loan was made on a recourse basis with the dealer.

Q Who was the dealer in this instance?

A Herbert Kaplan.

Q Is there a loan application in connection with the financing of a 1969 car?

A Yes, there is.

Q Is there anything on that loan application indicating the employment of the borrower?

A E-Z.



Borello-direct

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Q Any address furnished?

A 329 Carroll Street, Brooklyn.

Q Were there any payments made on this car during the course of the year 1970?

A There was.

Q Can you tell us what the total amount of payments made during 1971?

A \$1200.

Q Were these payments continued to 1971?

A They do.

Q What were the total amounts, sir, of the payments made during 1971?

A \$840.

Q Was this loan repaid in full by installment payments?

A It indicates a balance here, but I don't know. I don't have any further way of telling.

Q What date do the payments cease or terminate?

A That's 6/10 of '71 we got \$240. That was the last payment indicated on this transcript.

Q Does Mr. Bianco indicate a residence on the loan application?

A (No response.)

Q In connection with this 1969--

Borrello-direct

MR. LA ROSSA: Objection to the form of the question.

THE COURT: Well, is there a signature on that loan application?

THE WITNESS: Yes, there is.

THE COURT: In what name does the signature--

THE WITNESS: Nicholas L. Bianco.

THE COURT: I'll allow it.

THE WITNESS: This is a photostatic copy.

THE COURT: What address appears on there?

THE WITNESS: The address on here is 483 Ocean Parkway, Brooklyn.

MR. MC CAFFEY: No further questions.

CROSS EXAMINATION

BY MR. LA ROSSA:

Q Mr. Borrello, would you look at Exhibit 6, which is the first of the two applications, please. Do you have it?

A I don't know, the other one (document handed to the witness by Mr. LaRossa.)

Q Mr. McCaffrey asked you what the price of the vehicle was, and you said \$4,583; is that correct?

A And forty cents, right.

Q Then you were asked the amount of the loan.



Borrello-cross

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A Well--

Q What's your answer to that, sir?

A The amount of the loan, of course, after compiling the figures and the interest charged by the bank it comes to a considerable amount of more money.

Q Right. Will you please tell us what the net proceeds of that loan was on the day the bank advanced the moneys? Do you understand my question?

A Yes, I do. The net proceeds according to the file here is \$3,687.32.

Q Will you go through the exhibit, please, and tell us whether there's a bill of sale or an order from Kaplan Buick in that?

A Bill of sale? No, the only thing we have here is a conditional sales installment contract.

Q Referring--

A Security agreement.

Q Referring to that, Mr. Borrello, would you tell us on that particular form if it indicates what the price of the car itself is.

A It indicates the total time price plus automobile and the installment charge, credit service charge, indicates the amount came to \$5,249.08.

THE COURT: That's not what he's asking.

Borrello-cross

He's asking what the purchase price of the car is exclusive of finance.

THE WITNESS: \$4,583.40.

THE COURT: I thought three thousand--

THE WITNESS: No. I never said three.

MR. LA ROSSA: That was the proceeds of the loan.

THE WITNESS: Proceeds of the loan.

THE COURT: What was the purchase price?

MR. LA ROSSA: \$4583.40.

Q Was the \$3,687.32 which is the proceeds of the loan applied to the cost of that vehicle?

A Yes.

Q Will you look at the conditional sales contract and tell us.

A Yes, it was applied.

Q That leaves a balance, does it not, of some \$800 or \$900?

A \$896.08 cash down.

Q Will you tell us whether the agreement reflects the date that that money was paid to Kaplan Buick.

A November 25th, 1966. (sic)

Q Go to the next group of papers, Exhibit 7. Do you have that in front of you?



Borrello-cross

A Yes.

Q Is there a sales, conditional sales contract included in those papers?

A Yes, there is.

Q What's the date of that conditional sales contract?

A October 7, 1968.

Q That reflects the purchase of a 1969 Buick, does it not?

A Right.

Q Was the 1967 Buick which was the subject of the prior exhibit, was that traded in on that car? Can you tell us that by looking at the file?

A It indicates-- It doesn't show any trade-in allowance, just a cash amount of money put down like \$896.02, as I stated before, on the car.

Q I'm referring now to the '69 Buick.

A Yes?

Q Exhibit 7.

A Right.

Q Was the '66 Buick traded in against the '69 Buick?

A It does not indicate that on this.

Q Now, going back to the prior exhibits, you

Borrello-cross

told us about all the payments that that exhibit reflected.  
I'm talking about Exhibit 6 now.

A Right.

Q You told us that at a certain point there  
was a balance due and you couldn't tell us if any more  
payments were made.

A Right, because it stops there.

Q From your experience in Bankers Trust, would  
you say all those payments were made before the execution  
of the conditional sales contract in Exhibit 7? Do you  
understand my question?

A Yes. You want to know if this was completed--

Q Any question in your mind about that?

A No, I don't think so.

Q I mean, the bank wouldn't lend that additional  
sum of money as reflected by Exhibit 7 unless it was paid  
on Exhibit 6?

A Usually.

Q So when Mr. McCaffrey asked you whether there  
were additional payments due and owing with respect to the  
conditional sales contract on Exhibit 6, your experience  
would tell you the answer to that is no; is that right?

A Well, experience is one thing. What I'm  
reading here is another. I read here there was a balance



Borrello-cross

of \$2,297.53 on Exhibit 6.

Q Mr. Borrello, are there additional records that you don't have?

A I don't have any other additional records.

Q Is that because they have been destroyed?

A I couldn't say; I wouldn't know.

Q You mean you searched for the additional records?

A I didn't; someone else did.

Q Let's go back to Exhibit 7, the application to the bank for the loan on the second car, 1969. Does it reflect the balance due on the vehicle that was purchased in 1967?

A On the credit application?

Q Yes.

A No. It says "Statement of Current Debts." That would have been noted, just says "Bankers Trust Company," no figures.

Q Anything else in those files that indicate the loan that was made in 1966 was or was not paid?

A Not indicated, sir.

Q Is there anything in the records that indicate the loan evidenced by Exhibit No. 7 was repaid?

A No.

Borrello-cross

MR. LA ROSSA: Might I have Exhibit 5, please.

(Said exhibit handed to Mr. LaRossa by  
Mr. McCaffrey.)

Q Tell me, Mr. Borrello, you have spent many  
years in being involved in installment loans for Bankers  
Trust, have you not?

A I have.

Q I assume that you have gotten to know an  
awful lot about the business.

A I think I'm qualified.

Q When a man makes an application for a loan  
to Bankers Trust, is there a way that you determine  
whether or not he has other loans outstanding with other  
banks or institutions in the area?

A Yes, there is.

Q Does that cover GMAC as well?

A Yes.

Q Let me show you what's been marked Government  
Exhibit 5 in evidence (handing to the witness), which is  
a form of GMAC. I refer you to this date (indicating),  
12/8/1966.

A Right.

Q That vehicle was repossessed?

A Right.



Borrello-cross

Q Will you go back to Exhibit 6, sir, and tell me when that application came before Bankers Trust were you aware that GMAC had repossessed the vehicle belonging to Mr. Bianco?

A No. apparently not, because if we were, we would have noted it, had a TRA report on this thing. We don't have it. It's not indicated in none of the files.

Q You certainly would have made an application to find that out, would you not?

A Normally, without a doubt we will do that.

Q BUT nothing came up on that?

A We haven't gotten any, no.

MR. LA ROSSA: Nothing further.

MR. MC CAFFERY: I have no further questions.

(Witness excused)

H A R R Y S K L A R I N. called as a witness, having been duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: Full name for the record.

THE WITNESS: Harry Sklarin, S-k-l-a-r-i-n.

DIRECT EXAMINATION

BY MR. MC CAFFERY:

Q Mr. Sklarin, what's your profession or

Sklarin-direct

Eastern?

"Answer: I had my own personal repairs and I gave him an additional \$50.

"Question: Was that by cash or check?

"Answer: Cash.

"Question: That \$50 was for work not connected with the accident of February 1968?

"Answer: Right, prior to the accident."

THE COURT: If you wish to read additional material at some other time to the jury which establishes the dates when he took out that policy with Great Eastern and when, when he made that \$50 payment, of course you may do so.

MR. MC CAFFREY: No further questions.

MR. LA ROSSA: I have no questions.

(Witness excused)

HERBERT KAPLAN, called as a witness, having been duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: Full name for the record.

THE WITNESS: Herbert Kaplan.

DIRECT EXAMINATION

BY MR. MC CAFFREY:

Q What's your business or occupation?



Kaplan-direct

A Automobile dealer.

Q What make of automobile do you have a dealership for?

A Buicks.

Q Where is your agency located?

A 1455 86th Street, Brooklyn.

Q How long have you been at that location?

A At the present location, eleven years.

Q Do you know the defendant in this case, Nicholas L. Bianco?

A Yes.

MR. MC CAFFREY: I request this be marked as Government Exhibit 9 for identification.

THE CLERK: Document marked for identification as Government's Exhibit No. 9.

(So marked)

Q I show you Government's Exhibit 9 for identification, Mr. Kaplan (handing to the witness), and ask you did you sell a 1967 Buick to Nicholas L. Bianco.

MR. LA ROSSA: Object to the form of the question.

THE COURT: In or about 1966 or '67, did you sell a car to Mr. Bianco?

THE WITNESS: Yes.

Kaplan-direct

Q What kind of car?

A Buick.

Q Do those papers which you have before you relate to the sale of that car by your agency to Nicholas Bianco?

A Yes.

Q Do those papers indicate how the purchase of that car was financed?

A Yes.

Q What were the financing arrangements in connection with that car?

MR. LA ROSSA: I object to this.

THE COURT: You can offer the documents in evidence. Show it to Mr. La Rossa and then you can offer it in evidence and we'll see whether they're admissible.

(Mr. McCaffrey hands papers to Mr. LaRossa.)

(Pause)

MR. LA ROSSA: I have no objection to this exhibit.

THE COURT: It will be received.

THE CLERK: Government's Exhibit 9 received in evidence.

(So marked)



Kaplan-direct

Q I again refer you to Government's Exhibit No. 9 now in evidence, Mr. Kaplan. With whom is that car financed?

A Bankers Trust Company.

Q Can you tell us, please, what the terms of that financing arrangement were?

A A balance of \$3687, of which he paid thirty-five payments of \$120.91 and one payment of \$121.15.

Q Was there a cash payment in connection with the purchase of that car?

A \$1125 according to this (indicating).

THE COURT: What? When?

THE WITNESS: Probably on the day of delivery.

It doesn't say here.

Q What was the date of delivery, do you know? Can you tell from those documents?

A November 25th, 1966.

Q What was the model of car that was sold on this occasion?

A A Model 8457.

Q What kind of car is that, Mr. Kaplan?

A It's an Electra two-door.

Q Is there any further description of the car?

A It had a radio, rear speaker, white wall tires,

1 Kaplan-direct

2 air conditioning, seat belts, cornering lights, speed alert,  
3 tinted glass, rear window defroster, door guards, remote  
4 mirror, mats, power seat, power windows.

5 Q Sir, might I see this for a moment.

6 A (Document handed to Mr. McCaffrey.)

7 Q I show you, Mr. Kaplan, Government's Exhibit  
8 6 in evidence and ask you to look at that please (handing).  
9 Does that refer to the sale of the same car?

10 A This paper is not my paper (indicating).  
11 I only have three papers that belong to me here.

12 Q Sir, I call your attention to the first sheet  
13 comprising part of Government's Exhibit No. 6 in evidence, on  
14 which are the words, "with recourse." Was that sale in  
15 fact made with recourse to your agency?

16 A This sheet does not say it, but this sheet  
17 does (indicating); yes. it was.

18 Q I call your attention to the words "with  
19 recourse."

20 A This is not my sheet.

21 Q But it appears as part of the exhibit.

22 A Yes.

23 Q Was that sale in fact made with recourse to  
24 your agency?

25 A Yes.



Kaplan-direct

Q What did you understand by that, Mr. Kaplan?

A That if Mr. Bianco didn't pay I would pay.

I guaranteed the notes.

Q Had you ever previously sold an automobile to Mr. Bianco under the same terms with recourse to yourself?

A I don't remember whether it was before 1966.

I don't remember selling him any other car.

Q I show you--

MR. MC CAFFEY: Withdrawn.

I request this be marked as Government Exhibit No. 9.

THE CLERK: This is 10.

MR. MC CAFFEY: Request it be marked as 10 for identification.

(So marked)

Q I show you Government's Exhibit 10 for identification and ask you to look at that (handing to witness), Mr. Kaplan. Are those copies of papers from your file relating to the sale of an automobile to Nicholas Bianco?

A Yes.

Q You say this is not a part of your file?

A I don't recall that being in the file, that piece of paper (indicating).

MR. MC CAFFEY: Request this be marked as

Kaplan-direct

10-A.

(Said document handed to Mr. LaRossa.)

THE CLERK: So marked as 10-A.

THE COURT: While Mr. LaRossa looks at that exhibit, we'll take our five-minute afternoon recess.

(Recess)

(The witness resumes the stand.)

(The jury enters the jury box.)

DIRECT EXAMINATION (CONTINUED)

BY MR. MC CAFFEY:

MR. MC CAFFEY: I request, your Honor, Government Exhibit 10, previously marked for identification, be admitted into evidence.

MR. LA ROSSA: No objection.

THE CLERK: Government's Exhibit 10 received in evidence.

(So marked)

Q I again refer you to Exhibit 10 now in evidence, Mr. Kaplan, and ask you what kind of car those papers relate to.

A This is a 1969 Buick, Electra, 4-4, with a radio, white walls, air conditioning, tinted glass, rear window defroster, door guards, remote mirror, mats, power windows, mirror-map light, head rest, custom vinyl top.



Kaplan-direct

Q How was that car financed, sir?

A The car was financed through Bankers Trust.

Q What was the amount of the down payment on that car, Mr. Kaplan?

A \$60.25.

Q What was the total cost of the car?

A \$41.39.

Q What was that again?

A \$4139.05.

THE COURT: Every member of the jury would be down at your shop.

THE WITNESS: What did I say?

THE COURT: \$41.39.

\$60.25 down payment?

THE WITNESS: Yes.

THE COURT: The cost of the car?

THE WITNESS: \$4100.

Q Mr. Kaplan, I refer you to Government's Exhibit 7 previously admitted into evidence and direct your attention to the word "with recourse," that appear thereon.

Does that relate to the sale of the same car as does Exhibit No. 10, the papers that you just looked at previously?

Kaplan-direct

A (No response.)

Q I'll put it up here so you can compare it.

(A document is handed to the witness).

A It's the same car.

Q Was that car in fact financed with recourse to yourself?

A Yes.

MR. MC CAFFREY: I have no further questions.

CROSS EXAMINATION

BY MR. LA ROSSA:

Q Mr. Kaplan, you told us for some eleven years you have been at a specific location at 1455 86th Street; is that correct?

A Yes.

Q Is that the entire history of Kaplan Buick?

A No, we have been at 1455 for eleven years, but we were previously at another location.

Q How many years prior to that eleven years has Kaplan Buick been in existence?

MR. MC CAFFREY: Objection.

THE COURT: I'll allow it. It's cross-examination.

A In 1960 we were at 1532 86th Street.

Q So you have been in existence some fifteen



Kaplan-cross

years?

A Yes, sir, in that location, and prior to that I was at 848 Broadway, Brooklyn.

Q Mr. Kaplan, in addition to dealing with Bankers Trust, did Kaplan Buick also deal with GMAC?

A Yes.

Q And did GMAC exist in basically the same posture as Bankers Trust in that it would finance automobiles that you would sell to prospective customers?

A Yes.

Q Would you arrange for a financing through GMAC when someone would come to you to purchase a vehicle?

A Yes.

Q I show you, sir, what's been marked Exhibit 5 in evidence (handing to the witness). Have you ever seen that before?

A No.

Q Does that refer to a vehicle that you sold Mr. Bianco?

A I can't tell by this other than those serial numbers that you showed me in Exhibit 9 and 10.

Neither one of these cars is this automobile (indicating).

Q Can you tell by looking at Exhibit 5, the

Kaplan-cross

1  
2 one that's in your hand right now, whether that refers to  
3 a vehicle purchased prior to November 25th, 1966?

4 A Well, this is a 1965 automobile, and it says  
5 May 17th--some date. I don't see another, I don't see any  
6 other date that this could be referred to. I can't tell  
7 on this.

8 Q You can't tell whether it's prior to either  
9 one of these (indicating)?

10 A No.

11 Q Mr. Kaplan, I refer you on this form to this  
12 portion of the exhibit which says, "Repossessed 12/8/66."  
13 Do you see that?

14 A Yes.

15 Q Mr. Kaplan, in your experience over all these  
16 years as an automobile dealer, when you make an application  
17 to GMAC or Bankers Trust or any of the finance companies  
18 you deal with, do they make a check on the credit of the  
19 individual?

20 MR. MC CAFFEY: Objection.

21 THE COURT: I don't think he can answer that  
22 question. I'll sustain it.

23 Q Do you know whether they make a check?

24 THE COURT: Of your own knowledge rather  
25 than hearsay.



Kaplan-cross

THE WITNESS: Sometimes they do and sometimes they don't.

Q Do you know whether they make a determination on whether vehicles have been repossessed at or about the very same time a loan has been made?

A They might have a clearing house and they would find out.

Q Don't they have a clearing house?

A They do have a clearing house.

Q Will you tell us by looking at that repossession date on this form (indicating) and look at Exhibit 9 and tell us how much time between the time Bankers Trust gave Mr. Bianco \$3,687.22 does the repossession notice appear on Exhibit 5?

A I don't see anything here about a repossession.

Q No, sir, I'm referring to Exhibit 5, the date of the repossession.

A 12/8/66.

Q Will you tell me how long past, from the time that \$3,687.32 was received by Mr. Bianco from Bankers Trust to the date of that repossession.

A If this is 12/8/66, and this is 11/25/66, he got this car before this was repossessed.

Q Before the repossession?

Kaplan-cross

A Yes.

Q Tell me something else, sir. That 11/8 date is about two weeks after the date he received the 1966 Buick, is it not?

A (No response.)

Q The date of the repossession--

A 12/8.

Q 12/8/66, about two weeks after the day he received that Buick in '66?

A The new one; that's right.

Q Will you tell me, sir, on November 25th, 1968, when you delivered that 1966 Buick to him, did he pay you any money?

A (No response.)

Q Do you understand my question?

A No.

Q I'm referring you now to the exhibit--

A That car was repossessed according to this in 1966--

Q I'm referring you now to this exhibit here, which is No. 9 in evidence (indicating). That car was delivered to Mr. Bianco November 25th, 1966, was it not?

A Yes.

Q Will you tell us, sir, whether or not he paid



Kaplan-cross

any cash on the date of that delivery to you?

When I say "you," I'm referring to Kaplan Buick.

A If I recall correctly, it says \$1125, COD.

Q Was that paid in cash?

A I haven't any idea.

Q But you know from the forms that you received that much money on that particular date?

A That's right.

MR. LA ROSSA: I have nothing further.

Thank you.

REDIRECT EXAMINATION

BY MR. MC CAFFREY:

Q Do you know for a fact Mr. Kaplan, you actually received the \$1105 on the date indicated?

A I would say yes, we did.

Q When was the car actually picked up by Nicholas Bianco?

A The bill was made out on November 26th. It could be two or three days after that.

Q Is the down payment always paid before the customer picks up the vehicle?

A Not all the time. Sometimes it is and sometimes it isn't.

Kaplan-redirect

Q On those occasions when it is not made at or prior to the time that he, a customer, picks up the vehicle, when is it made?

MR. LA ROSSA: I object to this.

THE COURT: I think you opened the door to some extent on it. I'll allow it.

A What's the question?

MR. LA ROSSA: It should be directed towards this particular transaction.

THE COURT: You didn't direct your questions to this particular transaction. You asked him the same type of question. I'll allow this question.

MR. LA ROSSA: Note my objection.

A The question?

Q The question was in those instances, when the down payment wasn't made at or prior to the time the customer picked up the car, when would it be made?

A It's always made before or at the time that the car is picked up.

Q Didn't you just say, Mr. Kaplan, there were exceptions to that?

A No, I didn't; I didn't.

Q You know of no exceptions, I take it, to that rule?



Kaplan-redirect

A No.

Q Tell us, Mr. Kaplan, what was the reason you sold this car with recourse to yourself.

MR. LA ROSSA: Objection.

THE COURT: I don't see the relevancy. Maybe you can explain it to me.

(The following occurred at side bar.)

MR. MC CAFFEY: It seems like an unusual arrangement, your Honor, recourse to the dealer and the dealer being responsible if the customer doesn't pay. I want to bring out the reason for his doing so and bring out how long he has known Mr. Bianco, I want to bring out any discussions he has had with Mr. Bianco in the light of what his answers might be, whether or not he deferred payment of the down payment until some later date, as his testimony is sort of contradictory. He said in some instances they didn't pay at or prior to the time--

THE COURT: I still don't see the relevancy. Are you charging him with a down payment in a year different than 1966?

MR. MC CAFFEY: That might be the case, your Honor.

MR. LA ROSSA: Might I be heard?

## Kaplan-redirect

1  
2 THE COURT: Yes.

3 MR. LA ROSSA: It's the Government's witness.  
4 It's apparent to me the witness misunderstood what  
5 Mr. McCaffrey asked him at a point. I'm not so sure

6 THE COURT. I'm not so sure of that.

7 MR. LA ROSSA: Any car dealer receives the  
8 entire purchase price--

9 THE COURT: He admitted himself initially,  
10 but it wasn't always the case. Then he changed his  
11 testimony slightly. I'll allow it. I think if this  
12 part of their proof to show any basis for the change  
13 in testimony--

14 MR. LA ROSSA: Your Honor will note in all  
15 prior exhibits that have been introduced on the  
16 Government's case by the Government have shown the  
17 payment by Bianco in 1965. Now it's highlighted and  
18 would like to change it. It's their witness.

19 THE COURT: Is it the first taxable year?

20 MR. MC CAFFEY: '67.

21 THE COURT: You're putting \$1,000 in the  
22 '67 year, you're attempting to do it.

23 I'll allow it.

24 (The following occurred in open court.

25 (Continued on the following page.)



1  
2 Q My question, Mr. Kaplan, was what was the  
3 reason for making this sale with recourse?

4 A We make sales with recourse when we know the  
5 people and we know they have all intents of paying.

6 Q How long have you known Nicholas Bianco?

7 A A few years.

8 Q You say a few years. What do you mean by a  
9 few years?

10 A This was in '68. I only got into that neigh-  
11 borhood in 1960. It could be three to four years.

12 Q At that time?

13 A At that time.

14 Q Referring to the year 1966, you knew him three  
15 or four years?

16 A That's right.

17 Q With respect to people that you know, were  
18 there occasions when the down payment was made after the  
19 delivery of the car?

20 A Well, is that a question?

21 Q Yes.

22 A I don't understand the question.

23 Q With respect to people that you knew and  
24 had known for a period of time such as Nicholas Bianco,  
25 were there instances where the down payment was not made

1  
2 until after the car was picked up?

3 A I don't recall any.

4 Q Were there instances when you knew other peo-  
5 ple who knew the purchaser?

6 MR. LA ROSSA: Objection to the question--

7 Q In which you would permit the down payment  
8 to be made after the delivery of the car?

9 THE COURT: Wait a minute.

10 MR. LA ROSSA: I object to the question.

11 THE COURT: Read it back.

12 (Record read.)

13 THE COURT: I will sustain the objection.

14 You can object.

15 MR. LA ROSSA: Yes.

16 Q I won't say any names, Mr. Kaplan, but to you  
17 know any other people who know Mr. Bianco?

18 A There were a few people that used to come  
19 into our office that knew Mr. Bianco and being in the  
20 neighborhood, he knew a few people in the neighborhood.

21 Q Did they in any way accept responsibility for  
22 Mr. Bianco's car payments?

23 MR. LA ROSSA: Objection.

24 THE COURT: If you take "in any way" and  
25 they specifically guaranteed in writing or other-



Kaplan-redirect

1  
2 wise any responsibility for the car, I'll allow it.

3 MR. LA ROSSA: I object on the grounds  
4 of irrelevance as well.

5 THE COURT: I'll allow it if it's put in  
6 that form and not just "in any way." Did any of  
7 them do so?

8 THE WITNESS: There may have been some  
9 people besides myself who knew Mr. Bianco that  
10 approved of his past record with me as paying and  
11 paying different cars off, '66 and '68.

12 Q Again without asking you the names of  
13 these individuals, were there people who did in fact give  
14 you assurance that if you sold a car to Mr. Bianco you  
15 could look to them for payment if necessary?

16 A I would like to answer that in another--

17 MR. LA ROSSA: Objection.

18 THE COURT: No, overruled. Were they?

19 THE WITNESS: I would like to answer that in  
20 another way.

21 THE COURT: Just answer it yes or no.

22 A Yes.

23 Q Was that true, sir, with respect to the 1967  
24 car?

25 A Yes.

A 201 Affidavit of Service by Mail  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES OF AMERICA,

Plaintiff-~~Appellant~~ Appellee,

- against -

NICHOLAS L. BIANCO,

Defendant-Appellant.

Index No. :

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Eugene L. St. Louis

being duly sworn,

depose and say that deponent is not a party to the action, is over 18 years of age and resides at

1235 Plane Street, Union, N. J. 07083

That on the 16th day of September 1975, deponent served the annexed *Open Letter*

upon David G. ~~K~~ Trager

attorney(s) for

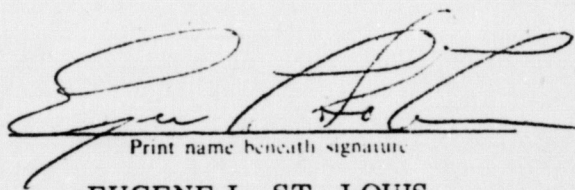
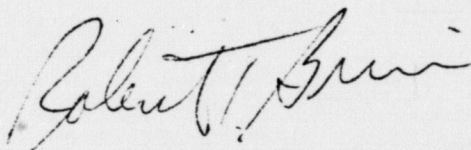
Appellee

in this action, at 225 Cadman Plaza, Brooklyn, N. Y.

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 16th

day of September 19 75



Print name beneath signature

EUGENE L. ST. LOUIS

ROBERT J. GREEN  
NOTARY PUBLIC, State of New York  
No. 31-0418950  
Qualified in New York County  
Commission Expires March 30, 1977





